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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

NOEL CHANDLER AND ROBERT GRANGER,
Appellants,

v.

STATE OF FLORIDA,
Appellee.

On Appeal From The
Supreme Court Of The State of Florida

JOINT BRIEF FOR AMICI CURIAE RADIO TELEVISION NEWS DIRECTORS ASSOCIATION, AMERICAN BROADCASTING COMPANIES, INC., AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS (AFL-CIO), AMERICAN SOCIETY OF NEWSPAPER EDITORS, ASSOCIATED PRESS BROADCASTERS, INC., ASSOCIATED PRESS MANAGING EDITORS, NATIONAL ASSOCIATION OF BROADCASTERS, NATIONAL BROADCAST EDITORIAL ASSOCIATION, NATIONAL BROADCASTING COMPANY, INC., NATIONAL NEWSPAPER ASSOCIATION, NATIONAL PRESS CLUB, NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION, NATIONAL PUBLIC RADIO, THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, AND SOCIETY OF PROFESSIONAL JOURNALISTS, SIGMA DELTA CHI

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TABLE OF CONTENTS

Page

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. THE NEWS MEDIA'S AUDIO-VISUAL COVERAGE OF A CRIMINAL TRIAL IS NOT A *PER SE* VIOLATION OF A DEFENDANT'S RIGHT TO A FAIR TRIAL 4

A. The *Estes* Decision Should Not Be Read to Bar Audio-Visual Coverage Today 5

B. Audio-Visual Coverage Promotes the First and Sixth Amendment Interests in Public Scrutiny of Criminal Trials 9

C. Appellants' Claims Do Not Support a Constitutional Ruling Prohibiting Audio-Visual Coverage of Criminal Trials 16

II. THE PRACTICES OF OTHER STATES CONFIRM THE VALIDITY OF FLORIDA'S CONCLUSION THAT AUDIO-VISUAL COVERAGE OF COURT PROCEEDINGS IS NOT *PER SE* PREJUDICIAL 20

A. The States Have Not Found *Estes* a Bar to Audio-Visual Coverage of Courtroom Proceedings 23

B. Florida's Rule on Courtroom Coverage Is Well Within the Bounds Permitted States Under a Federal System 27

CONCLUSION 29

Page

APPENDICES

Appendix A. Narrative Description of State Rules on Coverage of Courts by Electronic and Photographic Media

Appendix B. Classification of State Rules on Coverage of Courts by Electronic and Photographic Media

TABLE OF AUTHORITIES

Page

Cases:

Cox Broadcasting Corp. v. Cohn,
420 U.S. 469 (1975) 9

Craig v. Harney,
331 U.S. 367 (1947) 15

Estes v. Texas,
381 U.S. 532 (1965) ..... 2, 3, 5, *passim*

Green v. Florida,
337 So. 2d 193 (Fla. 3d Dist. Ct. App. 1979) 25

Houchins v. KQED, Inc.,
438 U.S. 1 (1978) 13, 14, 15

Irvin v. Dowd,
366 U.S. 717 (1961) 16

Kleindienst v. Mandel,
408 U.S. 753 (1972) 12

Leland v. Oregon,
343 U.S. 790 (1952) 20

McKeiver v. Pennsylvania,
403 U.S. 528 (1971) 20

In re Murchison,
349 U.S. 133 (1955) 17

Murphy v. Florida,
421 U.S. 794 (1975) 7, 16

Nebraska Press Ass'n v. Stuart,
427 U.S. 539 (1976) 7, 10, 16, 19

New State Ice Co. v. Liebman,
285 U.S. 262 (1931) 28-29

Page

Offutt v. United States,
348 U.S. 11 (1954) 12

In re Oliver,
333 U.S. 257 (1948) 9

Pell v. Procunier,
417 U.S. 817 (1974) 15

Pennekamp v. Florida,
328 U.S. 331 (1945) 15

Petition of Post-Newsweek Stations, Florida, Inc.,
370 So. 2d 764 (Fla. 1979) 7, 21, 22

PruneYard Shopping Center v. Robins,
48 U.S.L.W. 4650 (U.S. June 9, 1980) (No. 79-289) 29

Richmond Newspapers, Inc. v. Virginia,
48 U.S.L.W. 5008 (U.S. July 2, 1980) (No. 79-243) ... 2, 5, *passim*

Rideau v. Louisiana,
373 U.S. 723 (1963) 16

Sheppard v. Maxwell,
384 U.S. 333 (1966) 9, 16, 19

Snyder v. Massachusetts,
291 U.S. 97 (1934) 20

Speiser v. Randall,
357 U.S. 513 (1957) 15

State ex rel. Grinnell Communications Corp. v. Love,
62 Ohio St. 2d ____ (June 18, 1980) 26-27

United States v. Columbia Broadcasting System, Inc.,
497 F.2d 102 (5th Cir. 1974) 8

Whalen v. Roe,
429 U.S. 589 (1977) 28-29

Page

Miscellaneous:

American Bar Association Code of Judicial Conduct, Canon 3A(7) 21, 22, 26

Federal Rules of Criminal Procedure 53 21

Florida Office of the State Courts Administrator, "A Sample Survey of the Attitudes of Individuals Associated with Trials Involving Electronic Media and Still Photography Coverage in Selected Florida Courts" (July 5, 1977 - June 30, 1978) 17-18

Report of the Proceedings of the Judicial Conference of the United States (March 8-9, 1962) 22

Report of the Proceedings of the Judicial Conference of the United States (March 18-19, 1965) 22

Report of the Proceedings of the Judicial Conference of the United States (April 5-6, 1973) 22

Report of the Proceedings of the Judicial Conference of the United States (September 23-24, 1976) 22

Report of the Proceedings of the Judicial Conference of the United States (March 7-9, 1979) 22

The Roper Organization, Inc., Public Perceptions of Television and Other Mass Media: A Twenty-Year Review 1969-1978 (1979) 12

T. Smith, DE REPUBLICA ANGLORUM (Alston ed. 1972) 12

TV on Trial: It Affects Jurors in Court and Out, The Washington Post, July 8, 1980, at A6 11

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INTEREST OF AMICI CURIAE

This brief *amici curiae* is filed in support of Appellee, State of Florida. It is accompanied by the written consents of Appellants and Appellee.

These *amici curiae* are national organizations that together represent a broad spectrum of working journalists, broadcast stations and networks, newspapers, and others directly involved in the gathering and dissemination of news to the public. Many of these organizations or their members have experience in the electronic and photographic coverage of courtroom proceedings, including criminal trials.

Amici curiae have strongly advocated the First and Sixth Amendment interests in the public's direct monitoring of judicial proceedings through audio-visual means. The National Association of Broadcasters and the Radio Television News Directors Association filed a brief *amici curiae* in the case of *Estes v. Texas,* 381 U.S. 532 (1965), which presented this general issue. RTNDA has also prepared and distributed a "Guide to Broadcasting from the Courtroom: A Compilation of Legal Materials Regarding Coverage of Judicial Proceedings by the Electronic Media" (looseleaf, unpublished), co-sponsored by The Reporters Committee for Freedom of the Press.

SUMMARY OF ARGUMENT

I.

Careful use of cameras and microphones to provide public reports of criminal trials does not violate defendants' right to a fair trial. The constitutional values of a free press and a public trial would be curtailed unnecessarily by the blanket exclusion of audio-visual equipment used by the news media to enlarge public scrutiny and understanding of criminal trials.

In *Richmond Newspapers, Inc. v. Virginia,* 48 U.S.L.W. 5008 (U.S. July 2, 1980) (No. 79-243), this

Court forcefully reiterated the desirability of the widest possible public review of criminal trials and proclaimed the First Amendment right of the print and electronic media to gather news for that purpose. Because the use of cameras and microphones makes possible the most direct and credible reporting of trials, Appellants have a heavy burden in attempting to show that this form of news gathering and dissemination is violative of their rights.

Where as here defendants cannot demonstrate that news media coverage created a real probability of prejudice to the fairness of the trial, the Court should not assume that defendants have been deprived of the due process of law guaranteed by the Sixth and Fourteenth Amendments. This is consistent with the due process standard applied by the Court in other criminal cases in which defendants have alleged that prejudicial publicity deprived them of their constitutional rights.

In *Estes v. Texas,* 381 U.S. 532 (1965), the case principally relied upon by Appellants, the Court was influenced by the physical and psychological disturbance allegedly caused by the intrusive presence of a great quantity of electronic and photographic equipment and personnel during pretrial proceedings. Much of the rationale of the *Estes* majority has been undercut by changes in the technology involved and by the public's (including trial participants') perception of the news media. Even in 1965, the dissenting Justices thought the presumption should be in favor of the First Amendment interests, and they contested what they saw as the majority's willingness to elevate speculative fears to the level of constitutional doctrine.

II.

The States have shown increasing awareness of the importance of audio-visual coverage to greater public

understanding of the courts. The *Estes* Court thought it significant and perhaps crucial to its decision that only two States then permitted such coverage. Today, more than half of the States either have permanent rules or have experimented with some form of news media audio-visual coverage from the courtroom. Twenty-one States have permitted such coverage of criminal trials; 13 States have permitted such coverage over the defendant's objection.

No State which has permitted coverage has found that it interferes with the due process of law. The Conference of Chief Justices voted overwhelmingly for the proposition that each State should establish its own standards for any such coverage. All of this activity in the "laboratory" of the States, under court rules and guidelines, is affirmative testimony from the highest State courts that they believe a fair trial is not thwarted by carefully regulated audio-visual coverage.

ARGUMENT

I. THE NEWS MEDIA'S AUDIO-VISUAL COVERAGE OF A CRIMINAL TRIAL IS NOT A *PER SE* VIOLATION OF A DEFENDANT'S RIGHT TO A FAIR TRIAL

Appellants point to no specific prejudice created by the presence of cameras during their trial and do not argue that audio-visual coverage either disrupted their trial or transformed it into a spectacle.[1] Nevertheless, they argue

[1]"Audio-visual coverage," when used in this brief, refers to the use of (1) electronic cameras and microphones in the courtroom for the broadcast of the proceedings or excerpts thereof by radio and television stations to the general public; and (2) photographic cameras in the courtroom for the taking of still pictures used primarily in the print media. Under Florida rules, only one small electronic camera and one small photographic camera are permitted in the courtroom, with facilities elsewhere in the courthouse for news media pooling of the audio-visual product.

that such coverage denied them the fair trial guaranteed by the Sixth and Fourteenth Amendments. This result, they contend, is required by the Court's holding in *Estes v. Texas,* 381 U.S. 532 (1965), and by general constitutional principles of fair trial.

The facts of this case, the practices of the States, and the Court's construction of the First, Sixth, and Fourteenth Amendments support the opposite conclusion. The opinions supporting the Court's judgment in *Richmond Newspapers, Inc. v. Virginia,* 48 U.S.L.W. 5008 (U.S. July 2, 1980) (No. 79-243), must be read to have created at least a presumption in favor of this kind of news gathering that facilitates the widest and most direct public review of criminal trials.

A. The *Estes* Decision Should Not Be Read to Bar Audio-Visual Coverage Today

The *Estes* holding should not control the outcome of this case. *Estes* was a different case factually and was decided at a time when television not only was technologically different, but also, and perhaps more importantly, was perceived differently than it is now. In addition, the *Estes* majority reached conclusions about certain legal issues and psychological effects that on the available facts today are clearly incorrect and were even adjudged otherwise then by the four dissenting Justices.

This part of our brief will focus on two factors that were highly significant to the *Estes* majority: the almost-unanimous practice of the States in prohibiting television and photographic coverage in the mid-1960's, and the Court's premise that it must "take the facts as they are presented today" and could not rest its judgment on "the

hypothesis of tomorrow."[2] Much has happened since 1965 in both of these areas that requires reconsideration of the issues in *Estes,* particularly in view of the Court's heightened recognition of the valuable role performed by the print and electronic media in covering criminal trials as "surrogates for the public" not in attendance.[3]

In his opinion for the Court in *Estes,* Mr. Justice Clark noted three times that only two States then permitted the televising and photographing of a criminal trial. The Court said that "[t]his is weighty evidence that our concepts of a fair trial do not tolerate such an indulgence."[4] Elsewhere, the Court said that "[t]his fact is most telling in buttressing our conclusion that any change in procedure which would permit its [television's] use would be inconsistent with our concepts of due process in this field."[5] The same point is made in the concurring opinions of Mr. Chief Justice Warren[6] and Mr. Justice Harlan.[7]

Today there are 21 States that permit coverage of criminal trials under various restrictions, and a total of 28 States that have allowed various kinds of coverage of court proceedings. In Argument II of this brief, we describe and discuss in detail the developments in the States that have radically changed the situation that was thought so important by the *Estes* Court.

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[2]381 U.S. at 552. "When the advances in these arts permit reporting. . . by television without their present hazards to a fair trial we will have another case." 381 U.S. at 540.

[3]*Richmond Newspapers,* 48 U.S.L.W. at 5013 (opinion of Burger, C.J.), discussed at Argument I(B), *infra.*

[4]381 U.S. at 540.

[5]*Id.* at 544. *See also id.* at 550.

[6]*Id.* at 580-81.

[7]*Id.* at 594.

The other major change from the Court's premises in 1965 is the nature of audio-visual coverage itself. The Court generalized about this kind of media coverage from the specific manifestation of it at the *Estes* trial.[8] The *Estes* experience and the obtrusive circumstances criticized by the Court are, however, far removed from the present situation in which only a single, small electronic camera and a single, smaller photographic camera are permitted to cover trials in Florida under established statewide rules. These rules limit the use of microphones and lighting to equipment already in place for the court's purposes. Cameras are noiseless and harsh lighting and bulky cables have been eliminated. These rules also include restrictions on coverage that remove the burdensome need for continuous and distracting supervision by the judge during the trial.[9] Both the technology and the care in its use in the

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[8]The *Estes* majority placed great emphasis on the pretrial hearing at which physical and psychological disturbance was caused by the obtrusive presence of electronic and photographic equipment and personnel. 381 U.S. at 536-37, 550-51. *See* Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 552 (1976), where the decision in *Estes* was described as the product of an atmosphere of spectacle and failure of the trial judge to maintain control of the proceedings. Similarly, in Murphy v. Florida, 421 U.S. 794, 798-99 (1975), the inflammatory circumstances surrounding the trial in *Estes* were cited as the reason for the Court's dispensing with a particularized showing of prejudice.

[9]*See* Florida's Standards of Conduct and Technology Governing Electronic Media and Still Photography Coverage of Judicial Proceedings (Appendix 3 to the Florida Supreme Court's final opinion in Petition of Post-Newsweek Stations, Florida, Inc., 370 So. 2d 764, 792-94 (1979)). One of the fears expressed by the *Estes* majority was that judges would become so involved in coverage issues (*e.g.*, types of permissible equipment and their positioning) that they would lose sight of their judicial obligations. 381 U.S. at 551; *see also* 381 U.S. at 565, 568-69 (Warren, C.J., concurring). This fear has been allayed by the practice of requiring approval of coverage plans prior to any coverage and applicable to all future coverage, by requiring pool coverage, and through the use of media coordinators as administrators

courtroom have improved to the point where there is clearly no probability of prejudice. See other *amici curiae* briefs in support of Appellee for further discussion of the state of the art in broadcast and photographic technology.

Similarly, the public's perception of television, radio, and other media coverage of news events, including court news, has changed. The *Estes* Court suggested that the mere knowledge by trial participants and the public that a trial is important enough to be reported in this manner is sufficient to prejudice the defendant's right to a fair trial.[10] If this were ever so, it certainly is not so now. Television coverage of ordinary news events is now so well established that the presence of a television camera in a public place suggests nothing more unusual than does the presence of a newspaper reporter or sketch artist, a common occurrence in courtrooms.

If, as is so, reporters can take notes and artists can sketch trial participants without creating distractions and fears that would deprive a defendant of a fair trial,[11] there are no constitutional grounds for different treatment of a person with a camera when he is under careful controls.[12]

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for these plans. Thus, the courts – except for routinely monitoring compliance with the plans – are removed from administering the details of coverage.

[10]381 U.S. at 545-47, 549-50.

[11]*See* United States v. Columbia Broadcasting System, Inc., 497 F.2d 102 (5th Cir. 1974).

[12]Further analysis of the *Estes* decision is contained in Argument I(C), *infra*.

B. Audio-Visual Coverage Promotes the First and Sixth Amendment Interests in Public Scrutiny of Criminal Trials

This Court has frequently held that dissemination of information concerning criminal trials serves the purpose of the Sixth Amendment's guarantee of a public trial. The right to a public trial

> "has always been recognized as a safeguard against any attempt to employ the courts as instruments of persecution. The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power."

In re Oliver, 333 U.S. 257, 270 (1948). Similarly, in *Sheppard v. Maxwell,* 384 U.S. 333, 349 (1966), the Court said that the guarantee of a public trial is based on the "principle that justice cannot survive behind walls of silence." The press "guards against the miscarriage of justice by subjecting police, prosecutors, and judicial processes to extensive public scrutiny and criticism." *Id.* at 350. And in *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469, 491-92 (1975), the Court reaffirmed the particular importance of the press — in that case the broadcast press — in guaranteeing fair trials.

Now, in *Richmond Newspapers,* the Court has made its strongest statements yet about the importance of press trial coverage, recognizing a First Amendment "right of access" to criminal trials that overcomes a defendant's objection "absent an overriding interest articulated in findings."[13] In addition to reaffirming the traditional

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[13] 48 U.S.L.W. at 5015 (opinion of Burger, C.J.); *see id.* (Stevens, J., concurring).

values ascribed to open trials,[14] the Court, through its plurality and concurring opinions, emphasized that the press performs a special, representative role in providing information — necessary to realization of the aforementioned public trial values — to the growing public that cannot personally attend trials. The Chief Justice stated:

> "Instead of acquiring information about trials by firsthand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of functioning as surrogates for the public. While media representatives enjoy the same right of access as the public, they often are provided special seating and priority of entry so that they may report what people in attendance have seen and heard. This 'contribute[s] to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system. . . .' *Nebraska Press Assn. v. Stuart,* 427 U.S. 539, 587 (BRENNAN, J., concurring)."[15]

These are also strong arguments for audio-visual coverage of court proceedings because such coverage enlarges the public that can directly observe the trial. The coverage, being direct, is more credible because the

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[14]E.g., assurance that the proceedings are conducted fairly; support for judicial remedies; legal education; check on government power; discouragement of perjury and other misconduct of participants; enhancement of the performance of participants; and therapeutic value in community reaction to shocking crime. *See id.* at 5014 (opinion of Burger, C.J.); *id.* at 5018 (Brennan, J., concurring).

[15]*Id.* at 5013 (opinion of Burger, C.J.); *accord, id.* at 5020 & n.3 (Stewart, J., concurring); *id.* at 5016 n.2 (Brennan, J., concurring).

possibility of erroneous or subjective reporting is eliminated or reduced, depending on whether the trial is broadcast in whole or in part. Such direct trial coverage is by definition more realistic and vivid than written or spoken descriptions and sketches by the news media. Authentic courtroom coverage also serves to dispel exaggerated notions of trials which are fostered by television drama and other fictional accounts of trials.[16]

Mr. Justice Brennan observed in *Richmond Newspapers* that "the availability of a trial transcript is no substitute for a public presence at the trial itself."[17] Similarly, the availability of print and broadcast reports, as informative as they are, is no substitute for direct public monitoring of trials when the proceedings are carried in whole or part by radio and television.

The Court in *Richmond Newspapers* did not consider the "conceptually separate, yet related question" of "whether the media should enjoy greater access rights than the general public," as Mr. Justice Brennan noted in his concurring opinion. "As a practical matter, however, the institutional press is the likely, and fitting, chief beneficiary of a right of access because it serves as the 'agent' of interested citizens, and funnels information about trials to a large number of individuals."[18]

In that representative role, the press is accorded courtroom accommodations that other members of the public do not have. In this connection, it is not without significance that most Americans now receive most of their

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[16]*See TV on Trial: It Affects Jurors in Court and Out*, The Washington Post, July 8, 1980, at A6.

[17]48 U.S.L.W. at 5019 n.22 (Brennan, J., concurring).

[18]*Id.* at 5016 n.2 (Brennan, J., concurring).

news from radio and television.[19] It is consistent with their special and "fitting" status that the news media are being permitted in increasing numbers of States to use equipment in the courtroom that allows the great public not in attendance to observe trial proceedings first-hand through radio and television.[20]

The need for this modern practice of audio-visual news coverage of trials can be better appreciated when it is realized, as did the plurality in *Richmond Newspapers,* that "it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted."[21] In such matters, it would appear that there is "a First Amendment right [of the public] to 'receive information and ideas,'"[22] and this right might be infringed if the news media are not permitted to cover trials in the most in-

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[19]The Roper Organization, Inc., Public Perceptions of Television and Other Mass Media: A Twenty-Year Review 1959-1978 (1979).

[20]"To work effectively, it is important that society's criminal process 'satisfy the appearance of justice.' *Offutt* v. *United States,* 348 U.S. 11, 14 (1954), and the appearance of justice can best be provided by allowing people to observe it." 48 U.S.L.W. at 5012 (opinion of Burger, C.J.).

Mr. Chief Justice Burger's opinion recounted English common law history that establishes the purpose of the law that "'all men may heare from the mouth of the depositors and witnesses what is saide.'" T. Smith, DE REPUBLICA ANGLORUM 101 (Alston ed. 1972), *quoted at* 48 U.S.L.W. at 5011.

[21]48 U.S.L.W. at 5013 (opinion of Burger, C.J.); *see also id.* at 5018, 5019 (Brennan, J., concurring): "It follows that the conduct of the trial is preeminently a matter of public interest."

[22]Kleindienst v. Mandel, 408 U.S. 753, 762 (1972), *quoted in Richmond Newspapers,* 48 U.S.L.W. at 5013 (opinion of Burger, C.J.); *see also id.* at 5020 n.2 (Stewart, J., concurring); *id.* at 5016 n.3 (Brennan, J., concurring).

formative manner, assuming no overriding interest to the contrary.

Houchins v. KQED, Inc., 438 U.S. 1 (1978), is also strongly supportive of the access being granted to the press in Florida and elsewhere for the limited and controlled use of electronic and photographic equipment. In *Houchins,* a sheriff's office had denied media access to a notorious portion of the county jail, except through limited guided tours at which cameras and microphones were prohibited. Although the Court vacated an injunction requiring very broad access to the jail, a majority of the Court would have voted to permit the press to use cameras and microphones on the tours provided for the public, agreeing that the First and Fourteenth Amendments give the press a special role to play in American society. [23] Mr. Justice Stewart said:

> "The Constitution requires sensitivity to that role, and to the special needs of the press in performing it effectively. A person touring Santa Rita jail can grasp its reality with his own eyes and ears. But if a television reporter is to convey the jail's sights and sounds to those who cannot personally visit the place, he must use cameras and sound equipment. In short, terms of access that are reasonably imposed on individual members of the public may, if they impede effective reporting without sufficient justification, be unreasonable as applied to journalists who are

[23] 438 U.S. at 17 (Stewart, J., concurring), 39 n.36 (Stevens, J., dissenting, joined by Brennan and Powell, JJ.).

there to convey to the general public what the visitors see."[24]

In *Estes*, the four dissenters argued for a presumption in favor of accommodating First Amendment interests:

> "The Constitution does not make us arbiters of the image that a televised state criminal trial projects to the public.
>
> "While no First Amendment claim is made in this case, there are intimations in the opinions filed by my Brethren in the majority which strike me as disturbingly alien to the First and Fourteenth Amendments' guarantees against federal or state interference with the free communication of information and ideas. The suggestion that there are limits upon the public's right to know what goes on in the courts causes me deep concern. The idea of imposing upon any medium of communications the burden of justifying its presence is contrary to where I had always thought the presumption must lie in the area of

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[24] *Id.* at 17. The reasoning in Mr. Justice Stewart's opinion in *Houchins* would support an argument that the First and Fourteenth Amendments require admission of news media equipment for the coverage of criminal trials in the absence of substantial reasons for not permitting it under appropriate controls. *See also* Mr. Justice Brennan's question and other discussion above, in connection with *Richmond Newspapers*, about whether the media should enjoy greater access than the general public; and *Estes*, 381 U.S. at 614-15 (Stewart, J., dissenting), set forth in the text immediately hereinafter. If the Court is otherwise in agreement with our argument in this brief, it need not address itself to the question of a First Amendment *right* to provide audio-visual coverage, because Florida has permitted such coverage pursuant to a petition initiated by the news media and under rules that the news media have not challenged.

> First Amendment freedoms. See *Speiser v. Randall,* 357 U.S. 513, 525. And the proposition that nonparticipants in a trial might get the 'wrong impression' from unfettered reporting and commentary contains an invitation to censorship which I cannot accept. Where there is no disruption of the 'essential requirement of the fair and orderly administration of justice,' '[f]reedom of discussion should be given the widest range.' *Pennekamp v. Florida,* 328 U.S. 331, 347. . . ."[25]

This position, we submit, received strong support in *Richmond Newspapers.*[26] To fulfill their reporting function, television and radio journalists and still photographers require use of equipment – the tools of their trade – which are essential to their reporting of this public event.[27] To place photographers and electronic journalists on a par with print reporters in their ability to communicate through their respective media, Florida has allowed carefully regulated access to trials by audio-visual equipment. The presumption argued by the *Estes*

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[25]381 U.S. at 614-15 (Stewart, J., dissenting).

[26]*E.g.,* 48 U.S.L.W. at 5013 (opinion of Burger, C.J.): "[A] presumption of openness inheres in the very nature of a criminal trial under our system of justice."

[27]"The trial is a public event. What transpires in the courtroom is public property." Craig v. Harney, 331 U.S. 367, 374 (1947). This case, which involves a question of the means permissible for the dissemination of information already available to the general public in the courtroom, is thus unlike the access question raised in Pell v. Procunier, 417 U.S. 817 (1974), in which the Court held that news reporters have no constitutional right of access to prisons or their inmates if the general public has no such right or opportunity. In *Houchins,* Mr. Justice Stewart's concurring opinion recognized that distinction.

dissenters and reflected in the opinions in *Richmond Newspapers* supports Florida's grant of access for all news media in the absence of special circumstances demonstrating prejudice.

Finally, the teaching of *Richmond Newspapers* about the strength of our society's commitment to open and publicized trials necessarily means that certain minimal risks will be accepted in order to vindicate the public's right to acquire the most meaningful information. This is true, of course, with respect to the exercise of other First Amendment rights.

In order for this Court to conclude – despite the resulting substantial harm to the First Amendment interests of the public – that the presence of cameras and microphones is a *per se* denial of due process of law, the Court would have to find that the presence of such equipment has an impact on trials so adverse and so different from the effect of note-taking reporters, sketch artists, and the public generally that a fair trial cannot be had. As we show below, no such finding can be made under this Court's established standards.

C. Appellants' Claims Do Not Support a Constitutional Ruling Prohibiting Audio-Visual Coverage of Criminal Trials

The absence of ascertainable or probable prejudice starkly separates this case from the Court's holdings in *Estes* and other cases in which pretrial publicity has been deemed to have prevented fair trials. *See, e.g., Sheppard v. Maxwell, supra; Rideau v. Louisiana,* 373 U.S. 723 (1963); *Irvin v. Dowd,* 366 U.S. 717 (1961). In *Nebraska Press Association v. Stuart,* 427 U.S. 539, 551-52 (1976), and *Murphy v. Florida,* 421 U.S. 794, 798-99 (1975), the

Court noted that each of its trial publicity cases had involved either actual prejudice to the defendant's right to a fair trial, or inflammatory circumstances coupled with a lack of judicial control from which prejudice could be inferred.

In the absence of any identifiable prejudice, the Appellants' speculative claims of unfairness should be denied. Unlike the impact discerned by the Court in the pretrial proceedings in *Estes*, the presence of cameras in this case did not demonstrably interfere with the judicial atmosphere to the point of creating a "probability" of prejudice.[28] As the dissenters argued in *Estes* (381 U.S. at 615) and as follows from the thrust of the majority's opinions in *Richmond Newspapers*, particularly because First Amendment interests are at stake the defendant has a burden of demonstrating sufficient cause requiring the exclusion of audio-visual coverage. Appellants have not attempted to meet their burden. In such a situation, Florida's decision to permit audio-visual coverage of a trial which would otherwise be covered by reporters and artists presents no questions which rise to a constitutional level.

The fears of prejudicial television coverage expressed by the majority in *Estes* have either been obviated by advances in technology or pose problems no different than those already faced by judges in any controversial trial in dealing with reporters generally.[29] Among the concerns

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[28]The *Estes* Court relied upon *In re* Murchison, 349 U.S. 133, 136 (1955), to support its argument that isolable prejudice need not be shown if a state's procedure involves such a "probability" of prejudice that the procedure is "deemed inherently lacking in due process." 381 U.S. at 542-43.

[29]A study by Florida's Office of the State Courts Administrator showed that trial participants were not affected by the presence of television any more than by the presence of newspaper reporters. "A

highlighted by Mr. Justice Clark was possible prejudice if only notorious trials were televised, alerting jurors and other participants to the unusual nature of a case. With the spread of rules like Florida's permitting routine coverage, broadcast programming has included material from all kinds of courts about all kinds of cases – civil and criminal, notorious and obscure. Thus, television and photographic coverage is increasingly recognized as ordinary.

Moreover, because the average criminal trial does not have widespread attendance or extensive print media coverage, a contingent of reporters and artists is as sure a sign of public interest as is a single camera. Hence, if a trial is a subject of popular interest, it is not the incremental presence of audio-visual equipment which alerts the jury and witnesses to this fact.[30] Since this Court has repeatedly determined that trial judges are able to defuse prejudice by carefully controlling the presence of news personnel in the courtroom and sequestering and instructing the jury if necessary, coverage by cameras and micro-

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Sample Survey of the Attitudes of Individuals Associated With Trials Involving Electronic Media and Still Photography Coverage In Selected Florida Courts Between July 5, 1977 And June 30, 1978," Section I, questions 19-30.

[30]The use of pool cameras for courtroom coverage as required in Florida further minimizes any intrusion into court proceedings. The presence of these cameras is unobtrusive, and the pool system eliminates the distraction of broadcast reporters and photographers who would otherwise be entering and leaving the courtroom. Indeed, many print reporters may choose to cover a trial from a monitoring room outside the courtroom, which further reduces the perceived level of press interest in a case. Allowing audio-visual coverage of trials also reduces the crowding at courthouse entrances of reporters and cameramen seeking access to trial participants. Pool coverage occurs under pre-arranged rules, and the product is available to all media organizations.

phones cannot be presumed to substantially affect defendants' rights.[31]

Similarly, other problems identified in *Estes* are equally present with print reports and equally subject to control by trial judges. For example, a witness who could see the testimony of previous witnesses on television (381 U.S. at 547) could read about the testimony in the newspaper or hear it quoted on a news broadcast. Indeed, such reports might be less accurate than presentation of the actual trial by picture and sound. There is no reason to believe that the means now used to shield juries from such influences will be less effective if coverage is direct or taped for broadcast instead of by print quotation or paraphrase.

As the briefs of Appellee and other *amici curiae* demonstrate, the Supreme Court of Florida carefully evaluated the possibilities of prejudice to defendants' rights, both when it authorized the experiment under

[31] In *Sheppard v. Maxwell*, the Court suggested these and several other procedures available to trial judges to protect criminal proceedings from undue press influence. 384 U.S. at 358-62. Where appropriate, these measures are available to ensure that trials are not disrupted or harmed by press coverage of any kind. Mr. Chief Justice Burger emphasized this point in his opinion for the Court in *Nebraska Press Association* during the course of his discussion of the Hauptmann trial:

> "Criticism was directed at the 'carnival' atmosphere that pervaded the community and the courtroom itself. Responsible leaders of press and the legal profession – including other judges – pointed out that much of this sorry performance could have been controlled by a vigilant trial judge and by other public officers subject to the control of the court." 427 U.S. at 549.

See Richmond Newspapers, 48 U.S.L.W. at 5011, 5015 (opinion of Burger, C.J.): "All of the alternatives admittedly present difficulties for trial courts, but none of the factors relied on here [to support closing the trial] was beyond the realm of the manageable."

which Appellants' trial was covered and when it established a permanent rule. It found no evidence of any meaningful prejudicial effect, and its judgment has been supported by the judiciary in 20 other States which have authorized audio-visual coverage of criminal trials. Their experience is discussed below.

II. THE PRACTICES OF OTHER STATES CONFIRM THE VALIDITY OF FLORIDA'S CONCLUSION THAT AUDIO-VISUAL COVERAGE OF COURT PROCEEDINGS IS NOT *PER SE* PREJUDICIAL

In assessing the constitutionality of Florida's rules on audio-visual coverage of court proceedings, the Court should also examine the practices of other States. As Mr. Justice Clark stated for the Court in *Leland v. Oregon,* 343 U.S. 790, 798 (1952):

> "The fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' Snyder v. Massachusetts, 1934, 291 U.S. 97, 105."

See also McKeiver v. Pennsylvania, 403 U.S. 528, 548 (1971) (opinion of Mr. Justice Blackmun announcing the judgments of the Court). A thorough review of the policies of other States reveals that Florida's audio-visual courtroom coverage is neither abnormal nor offensive to any fundamental principle of justice.

At the time of the *Estes* decision, only Texas and Colorado clearly permitted audio-visual coverage of criminal

trials.[32] The *Estes* majority was plainly disturbed and heavily influenced by the fact that the proceedings in that case ran counter to traditional practices endorsed by the American Bar Association,[33] by the federal courts,[34] and by an overwhelming number of the States. *Estes,* 381 U.S. at 540, 544, 550 (opinion of Clark, J. for the Court), 580-81 (Warren, C.J. , concurring), and 594 (Harlan, J., concurring).

As discussed above, since the *Estes* decision, important technological advances and the decreasing novelty of the

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[32]*Estes,* 381 U.S. at 580-81 & nn. 38-39 (Warren, C.J., concurring). The situation in Oklahoma was unclear. *Id.* at 580 n.38.

[33]The Appendix to Mr. Justice Harlan's concurring opinion in *Estes* quotes the ABA's *amicus curiae* brief tracing the involvement of the ABA in this issue. 381 U.S. at 596-601. Since *Estes,* the ABA has abandoned Canon 35 and adopted a Code of Judicial Conduct which includes Canon 3A(7) on this subject. Canon 3A(7) is set forth in Appendix A hereto.

Although far more restrictive than the Florida practice at issue in the case at bar, ABA Canon 3A(7) does, at least, constitute endorsement of the view that the presence of audio-visual equipment in the courtroom is not inherently disruptive, distracting, or prejudicial. *See* note 34, *infra,* regarding implicit acceptance of this view by the Judicial Conference of the United States.

In 1978, the ABA's Adjunct Committee on Fair Trial – Free Press proposed a revised standard stating that audio-visual coverage was not *per se* inconsistent with the right to a fair trial. Although winning endorsements of various groups within the ABA, this proposed standard was not approved by the ABA House of Delegates at its mid-winter meeting in February, 1979. A complete description of the Adjunct Committee's activities is contained in the Florida Supreme Court's opinion in Petition of Post-Newsweek Stations, Florida, Inc., 370 So. 2d 764, 771 (Fla. 1979).

[34]The bar to audio-visual coverage of the proceedings of federal courts has not changed appreciably since *Estes.* Rule 53 of the Federal Rules of Criminal Procedure prohibits audio-visual coverage of criminal proceedings. In addition, a series of pronouncements by

audio-visual media have resulted in altered attitudes. State judiciaries, in particular, are no longer willing to presume the existence of subjective prejudices arising from audio-visual courtroom coverage.

These changed attitudes are accurately reflected by the August 2, 1978 action of the Conference of Chief Justices in overwhelmingly approving (44-to-1 with one abstention) a resolution that ABA Canon 3A(7) should be modified to permit each State, through its highest court, to establish needed standards and guidelines for audio-visual courtroom coverage. *See Petition of Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d at 791-92.

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the Judicial Conference of the United States have dealt with the issue of audio-visual coverage of federal court proceedings and have resulted in the Conference's approval of ABA Canon 3A(7). Therefore, although the ban on audio-visual coverage of federal court proceedings remains, the Conference's toleration of ABA Canon 3A(7) contradicts the proposition of Appellants that the mere presence of audio-visual media is necessarily prejudicial. *See* note 33, *supra*. Report of the Proceedings of the Judicial Conference of the United States, March 8-9, 1962, pp. 8-9 (resolution condemning audio-visual coverage); Report of the Proceedings of the Judicial Conference of the United States, March 18-19, 1965, p. 11 (reaffirmation of 1962 resolution); Report of the Proceedings of the Judicial Conference of the United States, April 5-6, 1973, pp. 9-11 (noting that ABA Canon 3A(7), as then proposed, would *not* conflict with the 1962 and 1965 resolutions); Report of the Proceedings of the Judicial Conference of the United States, September 23-24, 1976, p. 44 (rejecting the request of the Radio Television News Directors Association that audio-visual coverage of naturalization and ceremonial proceedings in federal courts be permitted); Report of the Proceedings of the Judicial Conference of the United States, March 7-9, 1979, pp. 24-25 (amending Code of Judicial Conduct to permit audio-visual coverage of naturalization and ceremonial proceedings).

A. The States Have Not Found *Estes* A Bar to Audio-Visual Coverage of Courtroom Proceedings

A survey of the rules of the 50 States and the District of Columbia reveals that *Estes* has not been construed as a bar to audio-visual coverage of courtroom proceedings.

A detailed narrative description of the rules of these jurisdictions and citations to those rules are contained in Appendix A. In Appendix B, we have classified the jurisdictions permitting coverage into several relevant categories.[35] The following discussion is based on this objective data.

In the wake of *Estes* and until 1974, only Colorado continued to permit audio-visual coverage of court proceedings. The Supreme Court of Washington in November, 1973 authorized experimental coverage of a trial, and this coverage eventually occurred in late 1974. From February 1, 1976 until the present – a period of only four and one-half years – 28 States, including Florida, have permitted some form of audio-visual coverage of their court proceedings.[36] Overall, 19 States

[35]These categories include: whether trial and/or appellate courts are covered; whether civil and/or criminal proceedings are encompassed; whether the rule is permanent or experimental; and the types of preconditions to coverage.

[36]Alabama, Alaska, Arizona, California, Colorado, Florida, Georgia, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York (one day experiment in New York Court of Appeals), North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Washington, West Virginia, and Wisconsin.

Sporadic audio-visual coverage has also occurred in several other States, including Arkansas, Indiana, and South Carolina, although not under any authorization from those States' highest courts or any state rule explicitly permitting coverage. Rather, this sporadic coverage has simply resulted from the decisions of individual judges to permit coverage in particular cases.

allow audio-visual coverage of both trial and appellate courts,[37] three have permitted trial coverage only,[38] and six have authorized appellate coverage only.[39] Moreover, the judiciaries of at least 12 other States are actively studying the possibility of audio-visual coverage of courtroom proceedings.[40]

The activities of these States reflect a rich variety of approaches in terms of the technical specifications and legal preconditions to coverage. Many States have undertaken experiments of limited duration; some of these have chosen to limit the experiment to particular geographic regions while others have preferred to obtain statewide experience. Some States require the consent of the parties and their counsel prior to any coverage; others permit but limit coverage if participants' consents are not obtained; still others allow full coverage absent the consents of participants. One common thread, however, binds all of these activities — in each instance, the courts have explicitly retained authority to terminate audio-visual coverage if it

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[37]Alabama, Alaska, California, Colorado, Florida, Georgia, Iowa, Louisiana, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Tennessee, Washington, and Wisconsin.

[38]Kentucky, Pennsylvania, and West Virginia.

[39]Arizona, Idaho, Minnesota, New York, North Dakota, and Texas.

[40]Arkansas, Connecticut, Delaware, Maine, Maryland, Mississippi, Missouri, Oregon, Rhode Island, South Dakota, Utah, and Vermont. Based on its abbreviated experiment, New York is considering expanded audio-visual coverage of courtroom proceedings. A petition requesting expansion of existing experimental coverage is also pending before the Pennsylvania Supreme Court.

proves distracting or disruptive or if it threatens the fairness of the judicial process.[41]

For purposes of the instant case, it is important to note that, of the 21 States which have permitted audio-visual coverage of criminal trials,[42] a majority (13 States) have chosen not to condition coverage of the proceedings upon the defendant's consent.[43] Florida is one of those States. Of those 13 States, 11 States, including Florida, allow coverage of the proceedings *and* the defendant without the defendant's consent.[44]

Moreover, the uncertainties and misinterpretations surrounding *Estes* have undoubtedly caused a number of other States to refrain from permitting any audio-visual coverage, to limit audio-visual coverage to appellate tribunals, to prohibit audio-visual coverage of all criminal proceedings, or to bar audio-visual coverage of criminal

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[41] *See, e.g.*, Green v. Florida, 377 So. 2d 193 (Fla. 3d Dist. Ct. App. 1979), where a conviction was reversed because the trial court, before permitting coverage, failed to hold an evidentiary hearing on the effect coverage would have had on the particular defendant's competency to stand trial.

[42] Alabama, Alaska, California, Colorado, Florida, Georgia, Iowa, Kentucky, Louisiana, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Tennessee, Washington, West Virginia, and Wisconsin.

[43] Alaska, Florida, Iowa, Kentucky, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, Ohio, Washington, West Virginia, and Wisconsin.

[44] Alaska requires the criminal defendant's consent only to cover the defendant himself; it does, however, require counsel's consent in order to have any coverage whatsoever in trial proceedings. Like Alaska, Washington requires the defendant's consent only as a precondition to coverage of the defendant. The remainder of these States, including Florida, do not condition coverage of the proceedings or of the defendant on the defendant's consent.

trials unless the defendant consents. Indeed, this Court's notation of probable jurisdiction in the present case prompted one State (California) to withdraw its proposed experimental rule which would have permitted coverage of a criminal trial over the defendant's objection. The Court's review of this case has also affected the nature of an advisory committee's recommendations in another State (New York) and appears to have contributed to the temporary tabling of a coverage recommendation in yet another State (Oregon).

The activities of 21 States in permitting criminal trial coverage reflect reasoned and reasonable judgments that audio-visual coverage of these proceedings is simply not *per se* prejudicial. Perhaps the strongest evidence of the absence of prejudice from audio-visual coverage is the fact that, of the States which have permitted this coverage, not one has decided to reinstate a ban on it as the result of any prejudicial effects or other bad experiences.[45] The highest courts of those States would not allow such a practice with or without the defendant's consent if they thought it were inherently prejudicial.

This point was emphasized by the Ohio Supreme Court in *State ex rel. Grinnell Communications Corp. v. Love,* 62 Ohio St. 2d ____, ____ (June 18, 1980), in which that court issued a writ of mandamus directing the respondent

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[45]The present bar to audio-visual coverage in Kentucky resulted when the Kentucky Supreme Court decided to adopt, as an entirety, a Code of Judicial Conduct (including ABA Canon 3A(7)). Kentucky had previously lacked such a code. Thus, Kentucky's current prohibition on audio-visual coverage resulted from adoption of that code rather than from any study of – or ill effects arising from – the audio-visual coverage which was allowed in the Jefferson Circuit Court.

trial judge to permit audio-visual coverage absent a disqualifying factor under Ohio's experimental Canon:

> "This reasoning [respondent's argument that the effects of coverage are unknown and must be presumed to have an adverse impact on a fair trial] ignores a necessary, albeit tacit, presumption underlying the adoption by this court of the Canon and Rule of Superintendence concerning media coverage. By adopting them in their present form, this court has posited that it is presumed that news coverage of a court proceeding is *not per se* inconsistent with a fair and impartial trial. This is a *sine qua non* for this court to have approved such coverage. On the other hand, it is precisely this presumption of fairness that the lower court has questioned and found to be lacking. . ., but it is its responsibility to scrutinize the case before it to see if any of the factors which rebut this presumption is present."

As shown in Argument I, *supra,* these are the types of judgments which the States are entitled to make absent probable prejudice of constitutional dimension resulting from the presence of the audio-visual media in the courtroom. These independent judgments of the States strongly support Florida's position that fundamental notions of due process are not offended by properly regulated media coverage.

B. Florida's Rule on Courtroom Coverage Is Well Within the Bounds Permitted States Under a Federal System

Innovations by the States in the area of courtroom coverage demonstrate the advantages of the pluralism and

experimentation permitted by our federalism. In refusing to agree in *Estes* to any flat constitutional prohibition on audio-visual courtroom coverage, Mr. Justice Harlan emphasized (381 U.S. at 587):

> "Forbidding this innovation, however, would doubtless impinge upon one of the valued attributes of our federalism by preventing the States from pursuing a novel course of procedural experimentation."

The benefits of federalism and the States' constitutional abilities to initiate change have long been recognized by this Court. In *Whalen v. Roe,* 429 U.S. 589, 597 n.20 (1977), for instance, Mr. Justice Stevens underscored this proposition for a unanimous Court:

> "Mr. Justice Brandeis' classic statement of the proposition merits reiteration:
>
> 'To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. *It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.* This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious or unreasonable. We have power to do this, because the due process clause has been held by the Court applicable to matters of substantive law as well as to matters of procedure. *But in the exercise of*

> *this high power, we must be ever on our guard, lest we erect our prejudices into legal principles.* If we would guide by the light of reason, we must let our minds be bold.' *New State Ice Co. v. Liebmann,* 285 U.S. 262, 311 (dissenting opinion) (footnote omitted)." (Emphasis added.)

It seems particularly appropriate, in this context as well as that of *Richmond Newspapers,* that the States should be recognizing and fostering modern means for the dissemination of information so vital to the American public. *See PruneYard Shopping Center v. Robins,* 48 U.S.L.W. 4650 (U.S. June 9, 1980) (No. 79-289).

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of the State of Florida should be affirmed.

Respectfully submitted,

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Appendices

APPENDIX A

Narrative Description of State Rules on Coverage of Courts by Electronic and Photographic Media

In this Appendix, the *amici curiae* describe the courtroom coverage rules of the 50 States and the District of Columbia and, where possible, furnish official citations to those rules. For purposes of this Appendix, the term "coverage" refers to audio and/or visual coverage of courtrooms by the electronic media and still photographers — whether on behalf of television, radio, or the print media — for news purposes. To the best of our knowledge and belief, these descriptions of rules are objective and accurate as of August 1, 1980.

A number of allusions are made in this Appendix to similar American Bar Association ("ABA") provisions on courtroom coverage regulation. This is done as a shorthand means of describing State rules. Canon 3A(7) of the ABA Code of Judicial Conduct is set forth at the end of this Appendix. Descriptions of the coverage rules of the 50 States and the District of Columbia follow.

(1) *Alabama* — On December 15, 1975, the Supreme Court of Alabama adopted Canons of Judicial Ethics to be effective February 1, 1976. Canon 3A(7A) and (7B) provides that trial and appellate courtroom coverage is permissible if the Supreme Court of Alabama has approved a plan for the courtroom in which coverage will occur. The plan must contain certain safeguards to assure that coverage will not detract from or degrade court proceedings, or otherwise interfere with a fair trial. If such a plan has been approved, a trial judge may, in the exercise of "sound discretion", permit coverage if: (1) in a criminal

proceeding, all accused persons and the prosecutor give their written consent and (2) in a civil proceeding, all litigants and their attorneys give their written consent. Following approval of their coverage plans, appellate courts may authorize coverage if the parties and their attorneys give their written consents. In both trial and appellate contexts, the court must halt coverage during any time that a witness, party, juror, or attorney expressly objects. In an appellate setting, it must also halt coverage during any time that a judge expressly objects to coverage. *Authority:* Canon 3A(7), 3A(7A), and 3A(7B), Alabama Canons of Judicial Ethics, ALA. CODE, Vol. 23 (Rules of the Alabama Supreme Court).

(2) *Alaska* – By order No. 324 (August 24, 1978), the Alaska Supreme Court permitted experimental coverage of the proceedings of the Supreme, Superior, and District Courts in the Anchorage court facility effective September 15, 1978. By Order No. 387 (September 27, 1978), the Alaska Supreme Court amended Canon 3(A)(7)(c) of the Alaska Code of Judicial Conduct to permit coverage of trial and appellate proceedings effective November 1, 1979. Prior to such coverage, a plan must be approved by the Supreme Court and must include safeguards to ensure that coverage will not distract participants, impair the dignity of court proceedings, or interfere with a fair trial. For trial proceedings, permission for coverage must be expressly granted by the judge and by the attorneys for all parties. Witnesses, jurors, or parties who object shall neither be photographed nor have their testimony broadcast or telecast. For coverage of Supreme Court proceedings, only the permission of the Court is required. *Authority:* Canon 3(A)(7), Alaska Code of Judicial Conduct, Alaska Rules of Court Procedure and Administration, Vol. IIA.

(3) *Arizona* – Canon 3(A)(7) of the Arizona Code of Judicial Conduct parallels the current ABA Canon. By order dated April 16, 1979, however, the Supreme Court of Arizona suspended this Canon to permit coverage of its proceedings and the proceedings of the State Courts of Appeals for the one-year period beginning May 31, 1979 and ending May 31, 1980. Subsequently, by order dated April 22, 1980, this experimental coverage was extended for one year (until May 31, 1981). Under this experiment, coverage must not detract from the dignity of court proceedings. *Authority:* Canon 3(A)(7), Arizona Code of Judicial Conduct, adopted by Rule 45, Rules of the Arizona Supreme Court, ARIZ. REV. STAT., Vol. 17A (as modified by above-referenced orders).

(4) *Arkansas* – Canon 3(A)(7) of the Arkansas Canons of Judicial Ethics follows the current ABA Canon. The Arkansas Bar Association has petitioned the Arkansas Supreme Court for a coverage plan requiring the consent of all parties and attorneys as well as the court. *Petition of Arkansas Bar Association for Modification of Code of Judicial Conduct,* No. 79-307. Witnesses would not be depicted or recorded unless their consents were obtained; jurors would not be covered at all. On November 5, 1979, the Arkansas Supreme Court requested comments on this proposal which had resulted from a report of the Arkansas Bar Association's Special Committee on Cameras in the Courtroom. The Chief Justice of the Arkansas Supreme Court has stated that the Court intends to act on the petition before the end of 1980. Several Arkansas trial judges, including Faulkner Circuit Judge George F. Hartje, Jr. and Little Rock Circuit Judge Lowber Hendricks, have permitted coverage of certain courtroom proceedings. *See also Moore v. State,* 229 Ark. 335, 315 S.W.2d 907 (1958)

(motion for continuance of trial not warranted where media photographed trial from outside the courtroom). *Authority:* Canon 3A(7), Arkansas Canons of Judicial Ethics, Supreme Court of Arkansas Manual of Rules and Committees (Judicial Department of Supreme Court of Arkansas).

(5) *California* – Rule 980 of the California Rules of Court forbids coverage; Rule 980.1 of those rules permits coverage studies if approved by the California Judicial Council. On May 10, 1980, the Judicial Council of California added Rules 980.2 and 980.3 to permit experimental coverage and experimental educational coverage of trial and appellate courts in California for the period July 1, 1980 through June 30, 1981. These rules were the result of a prolonged study conducted prior to and after the Judicial Council of California had, on December 2, 1978, approved the concept of a one-year experimental coverage program. Under the rules, the coverage must not be distracting or interfere with court proceedings. The judge must consent to coverage and, in trial court proceedings in criminal cases, written consents of the prosecutor and defendant must be obtained. The court may exercise its discretion concerning coverage of objecting witnesses. Due to the notation of probable jurisdiction by the Supreme Court of the United States in *Chandler v. Florida,* the Judicial Conference of California amended these experimental rules in two respects. First, it delayed the beginning of the experiment by one month. Second, it amended Rule 980.2 to require the consent of the defendants and the prosecutors in criminal trial proceedings. *Authority:* Rules 980, 980.1, 980.2, and 980.3, California Rules of Court, CAL. [Civil and Criminal Court Rules] CODE, Vol. 23, Part 2, 1979 Supp. Pamph. (West).

(6) *Colorado* – Canon 3(A)(7) through (10) of the Colorado Code of Judicial Conduct permits coverage of trial

and appellate courts in Colorado. These rules were the result of hearings ordered by the Colorado Supreme Court on December 12, 1955. Following hearings in late January and early February, 1956, the referee (Justice Otto Moore) issued a report. That report, dated February 20, 1956, favored coverage and was adopted by the Colorado Supreme Court on February 27, 1956. *In re Hearings Concerning Canon 35 of the Canons of Judicial Ethics,* 132 Colo. 591, 296 P.2d 465 (1956). Coverage must not detract from the proceedings, degrade the court, distract witnesses, or otherwise interfere with a fair trial. Trial judges may permit coverage by order. No coverage is permitted of criminal proceedings unless the defendant consents. Also, no witness or juror in attendance under court order or by subpoena shall be covered if he or she expressly objects. *Authority:* Canon 3(A)(7), 3(A)(8), 3(A)(9), 3(A)(10), Colorado Code of Judicial Conduct, COLO. REV. STAT., Vol. 7A (Court Rules), Appendix to Chapter 24.

(7) *Connecticut* – Canon 3(A)(7) of the Connecticut Code of Judicial Conduct is similar to ABA Canon 3(A)(7). The media have requested that coverage be permitted and have provided the Judicial Assembly (all State judges) with demonstrations of coverage, including tapes of mock trials. The Connecticut Bar Association Task Force, including attorneys and judges, are expected to submit recommendations on coverage to the Connecticut Supreme Court around July of 1980. *Authority:* Canon 3(A)(7), Connecticut Code of Judicial Conduct, Connecticut Practice Book (1978 Revision), Vol. 1.

(8) *Delaware* – Canon 3(A)(7) of the Delaware Judges' Code of Judicial Conduct is similar to the current ABA Canon. Rule 169 of the Rules of the Delaware Court of Chancery applies this code to its proceedings. Rule 53 of the Delaware Superior Court Criminal Rules, Rule 53 of

the Delaware Court of Common Pleas Criminal Rules, and Rule 31 of the Criminal Rules of Delaware Courts of Justices of the Peace forbid coverage. The Delaware Bar/Bench/Press Committee, appointed by the Delaware Supreme Court on September 30, 1975, is scheduled to issue a report on coverage shortly. *Authority:* Canon 3(A)(7), Delaware Judges' Code of Judicial Conduct, adopted by Rule 74, Rules of the Delaware Supreme Court, DEL. CODE, Vol. 16; Rule 53, Delaware Court of Common Pleas Civil Rules, DEL. CODE, Vol. 16; Rule 53, Delaware Superior Court Criminal Rules, DEL. CODE, Vol. 16; Rule 31, Delaware Courts of Justice of the Peace, Criminal Rules, DEL. CODE, Vol. 16. *See also* Rule 169, Rules of the Delaware Court of Chancery, DEL. CODE, Vol. 16.

(9) *District of Columbia* — Canon 35 of the District of Columbia Canons of Judicial Ethics parallels the provisions of former Canon 35 of the ABA Canons of Judicial Ethics. In the District of Columbia, Rule 53(b) of the Superior Court Rules of Criminal Procedure, Rule 203(b) of the Superior Court Rules of Civil Procedure, Superior Court Neglect Proceedings Rule 24(b), Superior Court Juvenile Proceedings Rule 53(b), and Superior Court Domestic Relations Rule 203(b) forbid coverage in trial proceedings. *Authority:* All provisions cited in the foregoing paragraph are contained in D.C. Code Encycl. (Court Rules - D.C. Courts) (West).

(10) *Florida* — A coverage experiment was initiated by the Florida Supreme Court in *Petition of Post-Newsweek Stations, Florida, Inc.* on January 27, 1976. 327 So. 2d 1. Initially, the experiment was not statewide and required that parties, jurors, and witnesses consent to coverage of their participation. This requirement was deleted, however, when the Florida courts met with total failure in ob-

taining the needed consents. On April 7, 1977, the Supreme Court ordered a one-year experiment from July 1, 1977 until June 30, 1978 (347 So. 2d 402) and adopted standards of conduct and technology (347 So. 2d 404). Prior approval by the Supreme Court of proposed standards and technology governing coverage was required. On April 12, 1979 in *Petition of Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764, the Florida Supreme Court amended Canon 3A(7) of the Florida Code of Judicial Conduct to permit coverage of trial and appellate courts effective May 1, 1979 and repealed Florida Rule of Criminal Procedure 3.110. Coverage is subject only to the authority of the presiding judge to control court proceedings, prevent distractions, maintain decorum, and assure fairness of the trial. *Authority:* Canon 3A(7), Florida Code of Judicial Conduct, Florida Rules of Court (West 1980). *See also* Article X, Integration Rule of the Florida Bar, Florida Rules of Court (West 1980) (applicability of code to members of the Florida Bar).

(11) *Georgia* – On May 12, 1977, the Supreme Court of Georgia amended the Georgia Code of Judicial Conduct by adding Canon 3A(8). 238 Ga. 855. (The Code had previously been adopted on December 17, 1973, effective January 1, 1974. 231 Ga. A-1.) Under Canon 3A(8), coverage of Georgia courts is permitted if a plan is approved in advance by the Supreme Court and if the affected court permits coverage. The Supreme Court is explicitly empowered to make rules to assure that the dignity and decorum of the proceedings remain unimpaired. Plans approved by the Supreme Court, including the plan for coverage of its own proceedings, have required consent of the attorneys and the parties and – in the trial context – of witnesses. *Authority:* Canon 3A(7) and 3A(8), Georgia Code of Judicial Conduct, referenced in GA. CODE ANN. § 24-4542 (Rule 42, Rules of the Georgia Supreme Court).

(12) *Hawaii* – Canon 3A(7) of the Hawaii Code of Judicial Conduct follows the current ABA Canon. *Authority:* Canon 3A(7), Hawaii Code of Judicial Conduct, adopted by Rule 16, Rules of the Supreme Court of the State of Hawaii (Appendix B) (Supreme Court of Hawaii).

(13) *Idaho* – By order dated September 27, 1976, the Idaho Supreme Court adopted a Code of Judicial Conduct to replace the Canons of Judicial Ethics which were previously in effect. Canon 3A(7) of the Idaho Code of Judicial Conduct specifies that judges shall comply with any coverage rule promulgated by the Idaho Supreme Court. By order dated October 18, 1978, the Idaho Supreme Court approved a plan for experimental coverage of its Boise proceedings for the period December 4, 1978 through June 30, 1979. Coverage was subject to the Court's discretion. By order dated August 27, 1979, the Idaho Supreme Court authorized coverage of its Boise proceedings for an indefinite period. The Idaho Supreme Court retains discretion to forbid coverage when it would interfere with "the proper administration of justice." On August 27, 1979, the Idaho Supreme Court also authorized one year (October 9, 1979 through October 8, 1980) of experimental coverage – subject to the Court's discretion – of its proceedings outside the Boise area. *Authority:* Canon 3A(7), Idaho Code of Judicial Conduct, Idaho State Bar Desk Book.

(14) *Illinois* – Rule 61(c)(24) of the Rules of the Illinois Supreme Court parallels the provisions of former ABA Canon 35 as originally adopted in 1937. Illinois Revised Statutes, Chapter 51, § 57 specifies that no witness shall be compelled to testify in any court in the State if any portion of his testimony is to be covered. A petition of the Illinois News Broadcasters Association to amend Illinois Supreme

Court Rule 61(c)(24) was denied by the Illinois Supreme Court on May 26, 1978. *Authority:* Rule 61(c)(24), Rules of the Illinois Supreme Court, ILL. REV. STAT. Ch. 110A; ILL. REV. STAT. Ch. 51, § 57.

(15) *Indiana* – Canon 3A(7) of the Indiana Code of Judicial Conduct is based on the current ABA provision. Coverage of a number of trial proceedings has occurred in Indiana but ceased after the Chief Justice of the Indiana Supreme Court notified State judges of the requirements of Canon 3A(7). *Authority:* Canon 3A(7), Indiana Code of Judicial Conduct, IND. CODE ANN. (Court Rules, Book 2) (Burns).

(16) *Iowa* – Canon 3A(7) of the Iowa Code of Judicial Conduct is similar to the present ABA Canon. On June 25, 1979, the Iowa Supreme Court ordered a public hearing on the coverage question. Following a hearing on September 18, 1979, that Court, by order dated November 21, 1979, suspended Canon 3A(7) for a one-year period beginning January 1, 1980 and substituted a revised provision which enumerates technical guidelines and which permits coverage of trial and appellate courts subject to the affected court's prior permission. In determining whether to grant permission, judges are to allow coverage unless, upon objection and showing of good cause, it would "materially interfere" with a fair trial. Consents of the parties are not required except in "juvenile, dissolution, adoption, child custody or trade secrets cases". *Authority:* Canon 3A(7), Iowa Code of Judicial Conduct, adopted by Rule 119, Rules of the Iowa Supreme Court, IOWA CODE (Court Rules), Vol. III.

(17) *Kansas* – Canon 3A(7) of the Kansas Code of Judicial Conduct is premised on the current ABA provision. *Authority:* Canon 3A(7), Kansas Code of Judicial

Conduct, adopted by Rule 601, Rules of the Kansas Supreme Court, KAN. STAT. § 20-176.

(18) *Kentucky* – Canon 3A(7) of the Kentucky Code of Judicial Conduct parallels the present ABA provision. The Kentucky Code of Judicial Conduct was adopted in its entirety on October 24, 1977 to be effective January 1, 1978, and rendered inoperative an August 23, 1977 resolution of the Jefferson Circuit Court (30th Judicial Circuit). Under this resolution, the signatory judges agreed to permit coverage of their trial proceedings unless it became disruptive or except in certain sensitive trial situations involving children and matters of domestic relations. *Authority:* Canon 3A(7), Kentucky Code of Judicial Conduct, adopted by Rule 4.300, Rules of the Kentucky Supreme Court, KY. REV. STAT. (Rules), Vol. 18.

(19) *Louisiana* – Canon 3A(7) of the Louisiana Code of Judicial Conduct follows the current ABA provision. On February 23, 1978, the Louisiana Supreme Court Conference authorized one year of experimental coverage in a trial court – Division B of the Ninth Judicial District Court for Rapides Parish. Under the guidelines, written permission of the parties and their counsel was required and, in criminal cases, this included the consents of the victim and the District Attorney. A report, dated March 30, 1979, by the trial judge recommended extension of the experiment and, on May 3, 1979, the Supreme Court of Louisiana extended the experiment for one year from the date of its order. Shortly thereafter, on July 13, 1979, Section 4164 of Title 13 of the Louisiana Revised Statutes became law. It permits coverage of court proceedings pursuant to any motion and stipulation, agreed to by all parties and approved by the judge. In *Fitzmorris v. Lambert,* 377 So. 2d 65 (1979), the Louisiana Supreme Court held that this statute and Canon 3A(7) did not necessarily con-

flict as long as a trial judge, in exercising his authority under the statute, complies with the requirements of the Canon. On May 9, 1980, Judge Douglas M. Gonzales, Division L of the Nineteenth Judicial District for East Baton Rouge Parish requested the Louisiana Supreme Court to authorize a one-year experiment permitting coverage of civil trials in that division. The proposed experiment would use the same guidelines employed in the Ninth Judicial District and was the result of several years of study conducted by a Bench-Bar-Media Committee for the Nineteenth District. *Authority:* Canon 3A(7), Louisiana Code of Judicial Conduct, LA. REV. STAT. ANN., Vol. 8 (Appendix) (West); LA. REV. STAT. ANN. § 13-4164 (West).

(20) *Maine* – Rule 53 of the Maine Rules of Criminal Procedure bars coverage in criminal cases. Likewise, Rule 53 of the Maine District Court Criminal Rules forbids coverage in district court criminal cases. The Maine Code of Judicial Conduct deletes Canon 3A(7). Maine Rules of Court, Desk Copy (West 1979). Accordingly, Maine has no provision barring coverage of civil cases. At present, an advisory committee appointed by the Maine Supreme Court is studying the coverage issue. *Authority:* Rule 53, Maine Rules of Criminal Procedures, Maine Rules of Court, Desk Copy (West 1979); Rule 53, Maine District Court Criminal Rules, Maine Rules of Court, Desk Copy (West 1979).

(21) *Maryland* – Canon XXXIV of the Maryland Canons of Judicial Ethics is based on ABA Canon 35 following the 1963 amendments. Rule 11 of the Maryland Rules of Judicial Ethics also forbids coverage. Currently, a petition to modify Canon XXXIV is pending before the Maryland Court of Appeals. *Petition of WBAL Division* (Sept. 25, 1979). Experimental coverage has been recom-

mended by a Judges' Committee and by the Special Committee on Cameras in the Courtroom of the Maryland State Bar Association. Under the proposal, coverage of civil and criminal trial proceedings in Maryland would be permitted for an 18-month experimental period where the parties consent to coverage. Appellate court coverage would be allowed on a non-experimental basis. On June 24, 1980, the Maryland Court of Appeals heard oral argument on the proposal. *Authority:* Canon XXXIV, Maryland Canons of Judicial Ethics, adopted by Rule 1231, MD. ANN. CODE (Maryland Rules of Procedure), Vol. 9C.

(22) *Massachusetts* – Canon 3A(7) of the Massachusetts Code of Judicial Conduct is similar – but not identical – to the current ABA provision. On March 21, 1980, the Supreme Judicial Court suspended this canon effective April 1, 1980 for an experimental one-year period. Appellate court coverage of civil and criminal cases began April 1, 1980; coverage of public, non-jury trials (civil and criminal) commenced May 1, 1980; and coverage of public jury trials (civil and criminal) was permitted as of June 1, 1980. As a general rule, coverage is to be allowed unless the court finds that there is "a substantial likelihood of harm to any person or other serious harmful consequence" resulting from such coverage. *Authority:* Canon 3A(7), Massachusetts Code of Judicial Conduct, adopted by Rule 3:25, Rules of the Massachusetts Supreme Judicial Court, Massachusetts Rules of Court, Desk Copy (West 1980) (as modified by above-referenced order).

(23) *Michigan* – Canon 3A(7) of the Michigan Code of Judicial Conduct forbids coverage except as authorized by the Michigan Supreme Court. To date, no coverage authorization has been given. *Authority:* Canon 3A(7),

Michigan Code of Judicial Conduct, Michigan Court Rules (West 1979).

(24) *Minnesota* – Canon 3A(7) of the Minnesota Code of Judicial Conduct parallels the current ABA provision. By order dated January 27, 1978, the Minnesota Supreme Court permits Canon 3A(7) to be waived for experimental purposes in cases pending before that tribunal. The experiment is for an indefinite period, and waiver of the rules is at the discretion of the Court. *Authority:* Canon 3A(7), Minnesota Code of Judicial Conduct, MINN. STAT. ANN. (Court Rules), Vol. 52 (West) (as modified by above-referenced order).

(25) *Mississippi* – Canon 3A(7) of the Code of Judicial Conduct of Mississippi Judges is the operative provision and parallels the current ABA Canon. The coverage issue is currently being studied by a committee of the Mississippi Conference of Judges. *Authority:* Canon 3A(7), Code of Judicial Conduct of Mississippi Judges, contained in Code of Professional Responsibility, Code of Judicial Conduct, Ethics Opinions (Mississippi State Bar).

(26) *Missouri* – Canon 3A(7) of the Missouri Code of Judicial Conduct is based on the current ABA provision. On November 19, 1979, the Board of Governors of the Missouri Bar submitted a proposal to the Missouri Supreme Court recommending that coverage of appellate proceedings be permitted with the consent of the parties. That proposal is currently pending before the Missouri Supreme Court. *Authority:* Canon 3A(7), Missouri Code of Judicial Conduct, adopted by Rule 2, Rules of the Missouri Supreme Court, MO. ANN. STAT. (Rules, Vol. 1) (Vernon).

(27) *Montana* – On February 3, 1978, the Montana Supreme Court suspended Canon 35 of the Montana

Canons of Judicial Ethics, which was premised on ABA Canon 35 following its amendment in 1952, to allow for a two-year experiment commencing April 1, 1978. *In the Matter of Canon 35 of the Montana Canons of Judicial Ethics.* Experimental Canon 35 required trial and appellate courts in Montana to permit coverage unless coverage in a particular case was deemed to "substantially and materially interfere with the primary function of the court to resolve disputes fairly." In such cases, the court was required to record its reasons for forbidding coverage. On April 18, 1980, the Montana Supreme Court amended Canon 35 of the Montana Canons of Judicial Ethics, effective immediately, to allow coverage of trial and appellate courts in that State. The terms of the amended canon are identical to those of the experimental canon. *Authority:* Canon 35, Montana Canons of Judicial Ethics, 144 Mont. xxii (1964), amended by order of April 18, 1980 (5 MONTANA LAWYER 12-13).

(28) *Nebraska* – Canon 3A(7) of the Nebraska Code of Judicial Conduct, adopted on April 18, 1973, is the same as ABA Canon 3A(7). *Authority:* Canon 3A(7), Nebraska Code of Judicial Conduct (no official citation or publication).

(29) *Nevada* – Canon 3A(7) of the Nevada Code of Judicial Conduct specifies that a court shall – on its own motion, the motion of any attorney, or the request of a witness testifying under subpoena – prohibit coverage by minute order. Chapters 1.220 and 178.604 of the Laws of Nevada, captioned "Court may prohibit broadcasting, televising, motion pictures of proceedings," reflected the same rule but were repealed by Assembly Bill No. 571 on March 21, 1979. By order dated February 6, 1980, the Nevada Supreme Court suspended Canon 3A(7) of the Nevada Code of Judicial Conduct to permit one year of experimental coverage of trial and appellate courts effec-

tive April 7, 1980. *In the Matter of Rules Setting Forth the Standards of Conduct and Technology Governing Electronic Media and Still Photo Coverage of Judicial Proceedings,* ADKT 26. The experimental rule does not require consent of the participants but subjects coverage to the judge's authority to ensure decorum, prevent distractions, and assure a fair trial. Prior to the effective date of the experimental rule, however, both trial and appellate coverage had been permitted on a sporadic basis. *Authority:* Canon 3A(7), Nevada Code of Judicial Conduct, adopted as Part IV of the Rules of the Nevada Supreme Court, NEV. REV. STAT., Vol. 1 (as modified by above-referenced order).

(30) *New Hampshire* – Rule 29 of the Rules of the Supreme Court of New Hampshire, issued December 6, 1977, and effective January 1, 1978, permits coverage of that Court's proceedings subject to the Court's consent. Canon 3A(7) of New Hampshire Supreme Court Rule 25 was, by order dated October 12, 1977, amended to permit the New Hampshire Superior Court to issue rules governing coverage effective January 1, 1978. Rule 78(A) of the Rules of the New Hampshire Superior Court, also effective January 1, 1978, forbids coverage except as provided in those rules or by order of the Presiding Justice. Interim guidelines for that rule permit coverage and state that the Presiding Justice may forbid coverage on his motion or on the motion of an attorney, party, or any witness called to testify. They also require prior express approval of the Presiding Justice in order to cover the jury in criminal cases. *Authority:* Rules 25 and 29, Rules of the New Hampshire Supreme Court, State of New Hampshire Court Rules and Directory (Equity); Rule 78(A), Rules of the New Hampshire Superior Court, State of New Hampshire Court Rules and Directory (Equity). These rules were formerly published as Appendices to N.H. REV. STAT. ANN. Chs. 490, 491.

(31) *New Jersey* – Rule 1:14 of the Rules of General Application to the Courts of New Jersey states that the ABA Code of Judicial Conduct, as amended and supplemented by the New Jersey Supreme Court, governs the conduct of New Jersey judges. By order dated November 21, 1978, the New Jersey Supreme Court ordered relaxation of Canon 3A(7) of the New Jersey Code of Judicial Conduct for the purpose of allowing coverage of its proceedings on December 12, 1978. On March 15, 1979, that Court ordered further relaxation of the Code of Judicial Conduct to permit coverage for an experimental period lasting one year or until six trials had been covered. The experiment commenced May 1, 1979. Under the experiment, coverage of New Jersey's appellate courts was permitted, and coverage of trial courts was allowed in Atlantic and Bergen Counties. Consents of participants were not required, but coverage of trials was banned in juvenile court cases or cases involving rape, child custody, divorce or matrimonial disputes, and trade secrets. Trial courts were also explicitly empowered to prohibit coverage where coverage would substantially increase the threat of harm to any participant or interfere with a fair trial or the fair administration of justice. On April 30, 1980, the New Jersey Supreme Court extended the experiment for an additional six months (until November 1, 1980) and expanded the experiment to permit trial coverage in all counties of the State. With these exceptions, the original experimental guidelines remain the same. *Authority:* Canon 3A(7), New Jersey Code of Judicial Conduct, Rules of General Application to the Courts of New Jersey, Part I (Appendix), New Jersey Court Rules (Pressler) (as modified by above-referenced orders); Rule 1:14, Rules of General Application to the Courts of New Jersey, New Jersey Court Rules (Pressler).

(32) *New Mexico* — The New Mexico Supreme Court, by order dated August 14, 1978, permitted coverage of a criminal trial proceeding. *In the Matter of Photographs, Radio and Television Coverage in State of New Mexico v. Richard Miller, Cause No. 30581-Criminal, Bernalillo County, New Mexico,* 8000 Misc. By order dated April 28, 1980, the New Supreme Court withdrew Canon 3A(7) of the New Mexico Code of Judicial Conduct, which parallels the current ABA provision, and substituted a provision authorizing coverage of district (trial) courts and appellate courts in New Mexico for an experimental period of one year beginning July 1, 1980. Under the experiment, appellate court coverage is not contingent upon the consent of the parties or their counsel although the court may impose limitations on coverage. In the trial courts, coverage may be authorized by the court acting within its discretion except that judges shall not permit coverage of any witness or juror who objects and who is in attendance under subpoena or court order. Coverage is prohibited in criminal cases unless the defendant gives consent. Photographic coverage of individual jurors is banned except in cases where the court and the jurors consent. For victims of sex crimes and their families, police informants, undercover agents, relocated witnesses, and juveniles, photographic coverage is absolutely forbidden. Under the experiment, coverage of courts other than appellate and district courts (*e.g.*, magistrate courts) is forbidden. Rule 4 of the Rules of the New Mexico Supreme Court, Rule 90 of the Rules of Civil Procedure for New Mexico District Courts, Rule 31 of the Rules of Criminal Procedure for New Mexico Magistrate Courts, and Rule 49 of the Rules of Criminal Procedure for New Mexico District Courts either explicitly permit coverage or allow coverage upon express approval of the Supreme Court. Rule 28 of the Rules of Civil Procedure for New Mexico Magistrate

Courts continues an express prohibition on coverage. *Authority:* Canon 3A(7), New Mexico Code of Judicial Conduct, N.M. STAT. ANN., Vol. 2 (Judicial Volume). Other rule citations furnished above are contained in N.M. STAT. ANN., Vol. 1 (Judicial Volume).

(33) *New York* – Canon 3A(7) of the New York Code of Judicial Conduct is similar to the current ABA provision. The Code of Judicial Conduct specifies, however, that its rules are subordinate to those of the Administrative Board of the Judicial Conference. The Administrative Board's rule, 22 NYCRR § 33.3(a)(7), specifies that coverage is prohibited unless permission is first obtained from the Chief Judge of the Court of Appeals or the Presiding Justice of the Appellate Division in which the court is located. By order dated August 16, 1979, the New York Court of Appeals authorized coverage of its proceedings on a one-day experimental basis. This coverage occurred on October 16, 1979. A Media Advisory Committee, appointed by the Chief Judge of the New York Court of Appeals on December 6, 1979, submitted its report to the Court on May 30, 1980. After studying the one-day experiment in the Court of Appeals and the experience in other States, the Committee recommended that coverage of appellate proceedings be permitted on a permanent basis. Such coverage would not be conditioned on the consent of the participants although the court could impose limitations on a finding of good cause. The Committee also recommended experimental trial court coverage for one year or at least twenty trials. In view of the decision of the Supreme Court of the United States to review *Chandler v. Florida,* the Committee requested that the experiment be limited to civil proceedings. Under its recommendation, consent of participants would not be a

precondition to coverage. A similar recommendation, suggesting permanent rules on appellate court coverage and an experiment with civil and criminal trial court coverage in which consents would not be an absolute pre-condition, was made on April 7, 1980 by the Special Committee on Communications Law of the Association of the Bar of the City of New York. *Authority:* Canon 3A(7), New York Code of Judicial Conduct, N.Y. [Judiciary] LAW, Book 29 (Appendix) (McKinney); 22 NYCRR § 33.3(a)(7), reported in New York Civil Practice Annual (Court Rules) (Bender 1978-79) (as modified by above-referenced order).

(34) *North Carolina* – Canon 3A(7) of the North Carolina Code of Judicial Conduct parallels the present ABA provision. Rule 15 of the General Rules of Practice for the Superior and District Courts of North Carolina bans coverage except on ceremonial occasions. *Authority:* Canon 3A(7), North Carolina Code of Judicial Conduct, N.C. GEN. STAT., Vol. 4A (Appendix VII - A); Rule 15, General Rules of Practice for the Superior and District Courts of North Carolina, N.C. GEN. STAT., Vol. 4A (Appendix I).

(35) *North Dakota* – On December 1, 1978, the North Dakota Supreme Court amended Canon 3A(7) of the North Dakota Code of Judicial Conduct, which previously paralleled the current ABA provision, to permit coverage of its proceedings subject to guidelines. In that order, the Supreme Court announced that experimental coverage of its proceedings would be permitted for a one-year period beginning February 1, 1979. The Court retained the right to prohibit coverage of certain proceedings, but coverage was not conditioned on consents of the parties or their counsel. *Petition For An Administrative Order Providing An Exception To Canon 3A(7) Of The Code Of Judicial Conduct Allowing A Period Of Ex-*

perimental Electronic Media And Photographic Coverage Of Certain Cases And Proceedings Before The North Dakota Supreme Court, AO 1-1978. *See* note to N.D. CENT. CODE § 27-01-02. By order dated January 24, 1980, the North Dakota Supreme Court extended the experiment for a period of five months (until July 1, 1980) and announced that, on May 6, 1980, it would hold a hearing to evaluate the experiment. *Electronic And Photographic Coverage Of Supreme Court Cases Extended To July 1, 1980,* AO 1-1980. On May 16, 1980, the North Dakota Supreme Court amended Canon 3A(7) of the North Dakota Code of Judicial Conduct to permit coverage of its proceedings on a permanent basis effective July 1, 1980. This coverage is subject to the same rules used during the experiment. *Electronic And Photographic Coverage Of Supreme Court Hearings,* AO 1A-1980. Rule 53 of the North Dakota Rules of Criminal Procedure prohibits coverage of criminal trial proceedings. *Authority:* Canon 3A(7), North Dakota Code of Judicial Conduct, Manual of North Dakota Supreme Court (North Dakota Supreme Court); Rule 53, North Dakota Rules of Criminal Procedures, N.D. CENT. CODE, Vol. 5B (Rules of Procedure).

(36) *Ohio* – On July 31, 1978, the Ohio Supreme Court published proposed draft amendments to Canon 3A(7) of the Ohio Code of Judicial Conduct, Superintendence Rule 11 of the Ohio Supreme Court, and Rule 9 of the Rules of Superintendence for Municipal Courts. These provisions had previously precluded coverage of Ohio courts, and the proposed amendments would have eliminated that ban. Following the period allowed for comments on the proposals, the Supreme Court adopted experimental provisions to be effective for a one-year period beginning June 1, 1979. Under these provisions, coverage of trial and appellate courts in Ohio is permitted subject to the court's

power to preclude coverage when it would be distractive, impair the dignity of the proceedings, or interfere with a fair trial. Coverage is not contingent on consent of participants, although the court may ban coverage of objecting witnesses or victims provided it determines there is reasonable cause for the objection. By order dated May 22, 1980, the Ohio Supreme Court extended the experiment until further order to permit continued coverage pending the Court's study of the experiment. *Authority:* Canon 3A(7) and the rules cited in this paragraph are contained in OHIO REV. CODE ANN. (Rules Governing the Courts of Ohio) (Page 1979).

(37) *Oklahoma* – By order dated October 25, 1978, the Oklahoma Supreme Court withdrew Canon 3A(7) of the Oklahoma Code of Judicial Conduct – which paralleled the current ABA provision – and substituted a revised Canon 3A(7) to be effective for one year beginning January 1, 1979. Under the experimental provision, trial and appellate coverage is permitted subject to consent of the court. Coverage of objecting witnesses, jurors, or parties is not permitted and, in a criminal trial, the defendant must consent to coverage. By order dated December 27, 1979, the Oklahoma Supreme Court extended the experiment for another year commencing January 1, 1980. *Authority:* Canon 3A(7), Oklahoma Code of Judicial Conduct, Oklahoma Court Rules and Procedures, Desk Copy (West 1979-80) (as modified by order of December 27, 1979).

(38) *Oregon* – Canon 3A(7) of the Oregon Code of Judicial Conduct parallels the present ABA provision. Experimental coverage was proposed by the Public Information Committee of the Oregon Judicial Conference on April 1, 1980, but the Oregon Judicial Conference tabled the proposal on April 29, 1980. This action followed dis-

cussions in which notation of probable jurisdiction by the Supreme Court of the United States in *Chandler v. Florida* was cited as a reason for delaying immediate action. The Oregon Supreme Court, however, has since decided against dropping the coverage issue completely. *Authority:* Canon 3A(7), Oregon Code of Judicial Conduct, Oregon State Bar Desk Book (Oregon State Bar).

(39) *Pennsylvania* — By order dated September 20, 1979, the Pennsylvania Supreme Court amended Canon 3A(7) of the Pennsylvania Code of Judicial Conduct to permit experimental coverage of non-jury civil trial proceedings for a one-year period beginning October 1, 1979. *In Re WTAE-TV,* No. 51 (W. D. Misc. Docket 1978). Previously, the Pennsylvania canon paralleled the current ABA provision. Coverage is also forbidden by Rules 27 and 328 of the Pennsylvania Rules of Criminal Procedure and Rule 7 of the Rules Governing Standards of Conduct of Justices of the Peace. Under the experiment, non-jury civil trial proceedings do not include support, child custody, or divorce proceedings. Permission of the court must be received prior to coverage, and coverage of objecting witnesses or parties is not permitted. In May, 1980, a supplementary petition was filed in the *WTAE-TV* proceeding. In the supplementary petition, the Pennsylvania Supreme Court is requested to expand the experiment to allow coverage of criminal trial proceedings and civil jury proceedings. Alternatively, the supplementary petition suggests that the existing experiment be extended six months. By order dated June 26, 1980, the Pennsylvania Supreme Court deferred action on the supplementary petition until its September, 1980 session. *Authority:* The provisions cited in this paragraph are contained in Pennsylvania Rules of Court, Desk Copy (West 1980).

(40) *Rhode Island* – Canon 30 of Rhode Island's Canons of Judicial Ethics prohibits broadcasting or televising of court proceedings as well as the taking of photographs or sketching in the courtroom. Rule 53 of the Rules of Criminal Procedure of the Rhode Island Superior Court contains a similar prohibition. Rule 53 of the Rules of Criminal Procedure of Rhode Island's District Court is identical except that no prohibition on sketching is included. A special committee has been appointed by the Rhode Island Supreme Court to study the coverage question. *Authority:* Canon 30, Rhode Island Canons of Judicial Ethics, adopted by Rule 48, Rules of the Rhode Island Supreme Court, R.I. GEN. LAWS, Vol. 2B (Court Rules); Rule 53, Rhode Island Superior Court Rules of Criminal Procedure, R.I. GEN. LAWS, Vol. 2B (Court Rules); Rule 53 Rhode Island District Court Rules of Criminal Procedure, R.I. GEN. LAWS, Vol. 2B (Court Rules).

(41) *South Carolina* – Canon 3A(7) of the South Carolina Judicial Conduct is similar to the present ABA provision. Coverage has been permitted by at least one trial judge, Wade S. Weatherford, Jr. of the Seventh Circuit, in a non-jury matter. Judge Weatherford was later informed of the requirements of Canon 3A(7), and coverage ceased as a result. *Authority:* Canon 3A(7), South Carolina Code of Judicial Conduct, adopted by Rule 33, Rules of the South Carolina Supreme Court, S.C. CODE, Vol. 22 (Court Rules).

(42) *South Dakota* – Canon 3A(7) of the South Dakota Code of Judicial Conduct is similar to the present ABA provision. The South Dakota Broadcasters Association has made coverage presentations to the South Dakota Supreme Court and its Advisory Committee. *Authority:*

Canon 3A(7), South Dakota Code of Judicial Conduct, S.D. COMPILED LAWS ANN. § 16-2 (Appendix).

(43) *Tennessee* – By order dated May 24, 1978, the Tennessee Supreme Court amended Canon 3A(7), contained in Rule 43 of its rules, to adopt an interim provision allowing coverage of its proceedings subject to the objection of participating counsel. *In re Rule 43, Canon 3A(7) – Code of Judicial Conduct.* On February 22, 1979, the Tennessee Supreme Court ordered the amendment of Canon 3A(7) to permit coverage of trial and appellate proceedings in Tennessee. Under the amendment, appellate courts may adopt rules permitting coverage subject to certain guidelines, including the injuction that coverage shall not detract from court proceedings. Trial courts are also authorized to permit coverage in accordance with plans which must be approved by the Tennessee Supreme Court. In criminal trial proceedings, the defendant must consent to coverage. In all trial proceedings, objections by a witness or juror will suspend coverage as to that person while objections by an attorney or party will suspend all coverage. By its terms, the Tennessee Supreme Court's order had no applicability to criminal proceedings until such time as the Tennessee legislature approved amendments to the Tennessee Rules of Criminal Procedures. *In re Rule 43, Canon 3A(7) – Code of Judicial Conduct.* Effective August 15, 1979, Rule 53 of those rules – which prohibited coverage of criminal proceedings – was withdrawn. *Authority:* Canon 3A(7), Tennessee Code of Judicial Conduct, adopted by Rule 43, Rules of the Tennessee Supreme Court, TENN. CODE ANN., Vol. 5A (Court Rules).

(44) *Texas* – By order dated November 9, 1976, the Texas Supreme Court amended Canon 3A(7) of the Texas

Code of Judicial Conduct to permit coverage of appellate proceedings. The prior consent of the court (or the Chief Justice or Presiding Judge) must be obtained, and the coverage must not distract participants or impair the dignity of proceedings. *Authority:* Canon 3A(7), Texas Code of Judicial Conduct, TEX. REV. CIV. STAT., Vol. 1A, Title 14 (Appendix B) (Vernon).

(45) *Utah* – Canon 3A(7) of the Utah Code of Judicial Conduct is similar to the present ABA provision. A petition requesting experimental coverage is pending before the Utah Supreme Court and was argued in November, 1979. *In re Petition of Society of Professional Journalists,* Case No. 16140. *Authority:* Canon 3A(7), Utah Code of Judicial Conduct, Utah State Bar Desk Book (Utah State Bar).

(46) *Vermont* – Canon 3A(7) of the Vermont Code of Judicial Conduct parallels the current ABA provision. Rule 53 of the Vermont Rules of Criminal Procedure prohibits coverage in criminals cases except as allowed by order of the Vermont Supreme Court. At present, a committee of the Vermont Bar Association is expected to present its recommendations concerning experimental coverage to the Vermont Supreme Court in September, 1980. *Authority:* Canon 3A(7), Vermont Code of Judicial Conduct, VT. STAT. ANN., Title 12, Appendix VIII, Administrative Order No. 10.

(47) *Virginia* – Canon 3A(7) of the Virginia Canons of Judicial Conduct is similar, but not identical, to the present ABA provision. *See* 215 Va. 859, 931 (1975); 216 Va. 914, 1134 (1976). Coverage of criminal proceedings is also forbidden under Section 19.2-266 of the Virginia Code and Supreme Court Rule 3A:34 (VA. CODE, Vol. 2 - Rules of Court). Supreme Court Rule 1:14 (VA. CODE, Vol. 2 -

Rules of Court) precludes coverage of all judicial proceedings. *Authority:* Canon 3A(7), Virginia Canons of Judicial Conduct, Virginia Supreme Court Rules (Part VI, Section III - Integration of the State Bar), VA. CODE, Vol. 2 - Rules of Court. *See also* citations provided in paragraph above.

(48) *Washington* – Acting upon a recommendation of the Bench-Bar-Press Committee of Washington, the Supreme Court of Washington, on November 28, 1973, authorized experimental courtroom coverage. This coverage first occurred in a criminal trial proceeding on December 2, 1974. *State v. Fetter,* Case No. 69484 (King County). Following its review of the results of that experiment, the Washington Supreme Court, by order dated July 23, 1976, amended Canon 3(A)(7) of the Washington Code of Judicial Conduct effective September 20, 1976. *In the Matter of the Adoption of Amendments to Code of Judicial Conduct, Canon 3(A)(7).* Under that amendment, coverage of trial and appellate proceedings in Washington is permitted if the court grants permission and if coverage will not distract participants or impair the dignity of the proceedings. No coverage of witnesses, jurors, or parties who express prior objections is permitted. *Authority:* Canon 3(A)(7), Washington Code of Judicial Conduct, Washington Court Rules Annotated, Vol. 1, Part 1 (Bancroft-Whitney).

(49) *West Virginia* - Canon 3A(7) of the West Virginia Judicial Code of Ethics parallels the current ABA provision. By letter dated November 14, 1978, the Chief Justice of the West Virginia Supreme Court of Appeals authorized the Seventeenth Judicial Circuit (Monongalia County) to permit coverage of its trial proceedings subject to certain guidelines. Under those guidelines, the trial court was empowered both to decide whether coverage should be

permitted in particular cases and to terminate existing coverage when it would impede justice. Although parties, witnesses, or attorneys could object to coverage, the court was given the authority to rule on such objections. To obtain further experience under the experiment, the Chief Judge of the Seventeenth Judicial Circuit extended the experiment, which eventually began in January 1979, through the end of 1979. (The Chief Judge had originally recommended only a six-month experimental period.) The Chief Judge has also informed the Supreme Court of Appeals that, unless it objects, he will continue the experiment into 1980. *Authority:* Canon 3A(7), West Virginia Judicial Code of Ethics, W. VA. CODE, Vol. 1 (Constitutions), Appendix.

(50) *Wisconsin* – On December 23, 1977, the Wisconsin Supreme Court, suspended Rule 14 of the Wisconsin Code of Judicial Ethics to permit coverage of trial and appellate proceedings for a one-year experimental period beginning April 1, 1978. The Court also specified that it would permit coverage of its proceedings on January 3, 1978 and of its February 20, 1978 hearing to determine guidelines for the experiment. By order dated March 16, 1978, the Wisconsin Supreme Court promulgated these experimental guidelines. Under those guidelines, the courts were authorized to determine whether coverage should be permitted in particular cases or portions of particular cases. Upon a showing of cause, the courts could prohibit coverage on their own motions or on those of participants. The experiment was eventually extended through June 30, 1979, by order of the Wisconsin Supreme Court. Following a review of the April 1, 1979 "Report of the Supreme Court Committee to Monitor and Evaluate the Use of Audio and Visual Equipment in the Courtroom," the Wisconsin Supreme Court, on June 21, 1979, rescinded

Rule 14 of the Wisconsin Code of Judicial Ethics and permanently authorized trial and appellate coverage effective July 1, 1979. Under the permanent rule, courts retain authority to determine whether coverage should occur and, upon a finding of cause, to prohibit coverage. A presumption of validity attends objections to coverage of participants in cases involving the victims of crimes (including sex crimes), police informants, undercover agents, juveniles, relocated witnesses, divorce, trade secrets, and motions to supress evidence. The Wisconsin Code of Judicial Ethics (Wisconsin Supreme Court Rules, Chapter 60) no longer refers to the coverage issue. Instead, Chapter 61 of the Wisconsin Supreme Court Rules contains the rules governing coverage. *Authority:* Chapter 61, Wisconsin Supreme Court Rules, WIS. STAT. ANN. (Supreme Court Rules) (West 1980 Special Pamphlet).

(51) *Wyoming* — By order dated September 4, 1973, the Supreme Court of Wyoming adopted the ABA Code of Judicial Conduct in its entirety with one minor exception not relevant here. Rule 50 of the Wyoming Rules of Criminal Procedure prohibits coverage of criminal proceedings. Rule 12 of the Uniform Rules for the District Courts of Wyoming likewise bars coverage. *Authority:* All of the provision cited in this paragraph are contained in Wyoming Court Rules Annotated (Michie 1979 Rev. Ed.).

* * * *

Canon 3A(7) of the ABA Code of Judicial Conduct reads as follows:

> "A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) The use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

"*Commentary:* Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding."

The terms of the predecessor to Canon 3A(7), Canon 35, as originally enacted in 1937 and as amended in 1952 and 1963, are set out in the Appendix to Mr. Justice Harlan's concurring opinion in *Estes v. Texas*, 381 U.S. 532, 596-601 (1965).

APPENDIX B

Classification of State Rules on Coverage of Courts by Electronic and Photographic Media

In this Appendix, the *amici curiae* classify States which permit courtroom coverage according to a number of relevant categories. We have not included several States (such as Arkansas, Indiana, and South Carolina) in which sporadic coverage has occurred but not as the direct result of rules or decisions of these States' highest courts. More detailed information on the rules of each jurisdiction and citations to those rules are furnished in Appendix A.

I. Classification According To Types Of Courts In Which Coverage Permitted

Coverage Permitted	States	Total
A. Trial and Appellate Courts	Alabama, Alaska, California, Colorado, Florida, Georgia, Iowa, Louisiana, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Tennessee, Washington, Wisconsin	19
B. Trial Courts Only	Kentucky,[1] Pennsylvania, West Virginia[2]	3
C. Appellate Courts Only	Arizona, Idaho, Minnesota, New York,[3] North Dakota, Texas	6

[1]Trial coverage was permitted on a non-experimental basis in the Jefferson Circuit Court (30th Judicial Court) until adoption of the Kentucky Code of Judicial Conduct.

[2]Trial coverage is restricted to the Seventeenth Judicial Circuit (Monogalia County).

[3]The New York Court of Appeals permitted coverage of its proceedings on a one-day experimental basis on October 16, 1979.

II. Classification According To Whether Rule Permitting Coverage Is Permanent Or Experimental

Type Of Rule	States	Total
A. Permanent	Alabama, Alaska, Colorado, Florida, Georgia, Idaho,[4] Kentucky,[5] Louisiana,[6] Montana, New Hampshire, North Dakota, Tennessee, Texas, Washington, Wisconsin	15
B. Experimental	Arizona, California, Idaho,[7] Iowa, Louisiana,[8] Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York,[9] Ohio, Oklahoma, Pennsylvania, West Virginia	15

Note: Since Idaho and Louisiana fall into both categories, the total number of States with permanent or experimental rules is really 28 rather than 30. Nine States (Alaska, Florida, Idaho, Louisiana, Montana, North Dakota, Tennessee, Washington, and Wisconsin) have implemented permanent rules during or after experimentation.

[4]The Idaho Supreme Court's order permitting coverage of its Boise proceedings seems to be permanent while its order allowing coverage of its proceedings outside Boise is experimental.

[5]*See* note 1, *supra.*

[6]The Louisiana Supreme Court has authorized experimental coverage and is considering additional authorization for experimentation. By statute, however, the Louisiana legislature has furnished directives under which coverage may occur.

[7]*See* note 4, *supra.*

[8]*See* note 6, *supra.*

[9]*See* note 3, *supra.*

III. Classification According To Types Of Proceedings Which May Be Covered

	Overall Rule	Type Of Proceeding Coverable	States	Total
A.	Trial Coverage Only	Civil and Criminal	Kentucky,[10] West Virginia	2
		Criminal Only	None	0
		Civil Only	Pennsylvania[11]	1
B.	Appellate Coverage Only	Civil and Criminal	Arizona, Idaho, Minnesota, New York,[12] North Dakota, Texas	6
		Criminal Only	None	0
		Civil Only	None	0
C.	Trial and Appellate Coverage	Civil and Criminal	Alabama, Alaska, California, Colorado, Florida, Georgia, Iowa, Louisiana, Massachusetts, Montana,	19

	Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Tennessee, Washington, Wisconsin	
Criminal Only	None	0
Civil Only	None	0

[10]*See* note 1, *supra.*

[11]Pennsylvania limits civil trial coverage to non-jury proceedings.

[12]*See* note 3, *supra.*

IV. Consent As A Precondition Or Limitation On Coverage[13]

Entity	States With Consent Of Entity As Absolute Precondition (Total)	States With Consent Of Entity As Limited Condition (Total)	States Where Consent of Entity Not Required (Total)
A. *Court's Consent*[14] (all cases)	Alabama, Alaska, Arizona, California, Colorado, Florida, Georgia, Idaho, Iowa, Kentucky,[15] Louisiana, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Washington, West Virginia, Wisconsin (28)	None (0)	None (0)

B.	*Party's Consent*[16] (civil cases and criminal appeals)	Alabama, Georgia,[17] Louisiana, Tennessee (4)	Alaska, Oklahoma, Pennsylvania,[18] Washington (4)[19]	Arizona, California, Colorado, Florida, Idaho, Iowa,[20] Kentucky,[21] Massachusetts, Minnesota, *(continued)*

[13]In this classification the term "absolute precondition" means that the particular entity's consent or acquiescense must be obtained for any coverage to occur. "Limited condition", unless otherwise stated, means that, if consent is not obtained or objection is made, that particular entity (*e.g.*, jurors) may not be covered but the remainder of the proceeding may be. In States where consent is not required or a limited condition is not imposed, coverage of the proceeding or the entity is not contingent upon consent.

[14]Twenty-eight States (all States allowing trial and/or appellate coverage) fall within this description.

[15]*See* note 1, *supra*.

[16]Twenty-eight States (all States allowing trial and/or appellate coverage) fall within this description.

[17]Although the general Georgia coverage provisions do not explicitly require the parties' consents, all plans approved by the Georgia Supreme Court contain such a requirement.

[18]Pennsylvania does not permit appellate court coverage.

[19]It is not entirely clear what would occur in Alaska, Oklahoma, and Washington if a criminal defendant objects to coverage of his appeal. Taken literally, the rules of those States would seem to permit coverage of the proceedings but preclude coverage of the defendant in those circumstances. Since many defendants do not attend their appeal proceedings, the point may be a relatively minor one.

[20]In Iowa, consents of parties are not required except in "juvenile, dissolution, adoption, child custody, or trade secrets cases."

[21]*See* note 1, *supra*.

Entity	States With Consent Of Entity As Absolute Precondition (Total)	States With Consent Of Entity As Limited Condition (Total)	States Where Consent of Entity Not Required (Total)
B. *Party's Consent (continued)*			Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York,[22] North Dakota, Ohio, Texas, West Virginia, Wisconsin (20)
C. *Counsel's Consent*[23]	Alabama, Alaska, Georgia, Louisiana, Tennessee (5)	None (0)	Arizona, California, Colorado, Florida, Idaho, Iowa, Kentucky,[24] Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York,[25] North Dakota, Ohio, Oklahoma, Pennsylvania,

			Texas, Washington, West Virginia, Wisconsin (23)
D. *Witness's Consent*[26] (civil and criminal trials)	None (0)	Alabama, Alaska, Colorado,[27] Georgia, New Mexico,[28] Oklahoma, Pennsylvania, Tennessee, Washington (9)	California, Florida, Iowa, Kentucky,[29] Louisiana, Massachusetts, Montana Nevada, New Hampshire, New Jersey, Ohio, West Virginia, Wisconsin (13)

[22]*See* note 3, *supra*.

[23]Twenty-eight States (all States allowing trial and/or appellate coverage) fall within this description. As used here, the term "Counsel" excludes only prosecutors in criminal trials. Prosecutors are covered in a separate category, *infra*.

[24]*See* note 1, *supra*.

[25]*See* note 3, *supra*.

[26]This entity description encompasses 22 States — those allowing trial and appeals coverage (19 States) and those allowing trial coverage only (3 States).

[27]In Colorado, consents of witnesses are not required except that a judge shall prohibit coverage of objecting witnesses and jurors in attendance under court order or subpoena.

[28]In New Mexico, consents of witnesses are not required except that a judge shall prohibit coverage of objecting witnesses and jurors who are in attendance under court order or subpoena.

[29]*See* note 1, *supra*.

Entity	States With Consent Of Entity As Absolute Precondition (Total)	States With Consent Of Entity As Limited Condition (Total)	States Where Consent of Entity Not Required (Total)
E. *Juror's Consent*[30] (civil and criminal trials)	None (0)	Alabama, Alaska, Colorado,[31] New Mexico,[32] Oklahoma, Tennessee, Washington (7)	California, Florida, Georgia, Iowa, Kentucky,[33] Louisiana, Massachusetts, Montana, Nevada, New Hampshire,[34] New Jersey,[35] Ohio, West Virginia, Wisconsin (14)
F. *Defendant's Consent*[36] (criminal trials)	Alabama, California, Colorado, Georgia,[37] Louisiana, New Mexico, Oklahoma, Tennessee (8)	Alaska,[38] Washington (2)	Florida, Iowa, Kentucky,[39] Massachusetts, Montana, Nevada, New Hampshire, New Jersey, Ohio, West Virginia, Wisconsin (11)
G. *Prosecutor's Consent*[40]	Alabama, Alaska, California,	None (0)	Colorado, Florida Iowa, Kentucky,[42]

(criminal trials)	Georgia,[41] Louisiana, Tennessee (6)	Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Washington, West Virginia, Wisconsin (15)

[30]This entity description embraces 21 States — those allowing trial and appeals coverage (19 States) and those allowing trial coverage in jury cases (2 States). Pennsylvania does not permit coverage of jury proceedings.

[31]*See* note 27, *supra.*

[32]*See* note 28, *supra.*

[33]*See* note 1, *supra.*

[34]In New Hampshire in criminal cases, prior express approval of the Presiding Justice of the Superior Court is needed for jury coverage.

[35]Coverage of jurors in New Jersey is permissible but it may not be such as to allow actual visual recognition of jurors.

[36]This description includes 21 States — those allowing trials and appeals coverage (19 States) and those allowing trial coverage of criminal cases (2 States). Pennsylvania does not allow coverage of criminal trial proceedings.

[37]Although the general Georgia coverage provisions do not explicitly require the criminal defendant's consent, all plans approved by the Georgia Supreme Court contain a provision mandating the parties' consents.

[38]It should be noted, however, that, in Alaska, counsel's consent is an absolute precondition to coverage in all cases. *See* Appendix A.

[39]*See* note 1, *supra.*

[40]This entity description includes 21 States. *See* note 36, *supra.*

[41]Although the general Georgia coverage provisions do not explicitly require the prosecutor's consent, all plans approved by the Georgia Supreme Court contain a provision requiring counsel's consent.

[42]*See* note 1, *supra.*

V. Coverage Exemptions For Certain Specified Types Of Cases

The rules of a number of States (*e.g.*, Nevada and Oklahoma) make clear the fact that coverage is not permitted when access is otherwise restricted by law. Moreover, although the courts in all States which permit coverage retain the authority to preclude coverage on a case-by-case basis, a number of States have explicitly prohibited or limited coverage in particular types of cases. In this category, those particular types of cases are enumerated.

Type of Case	States (Total)
A. Adoption	Iowa,[43] Kentucky[44] (2)
B. Child Custody	Iowa,[43] Kentucky,[44] New Jersey,[45] Pennsylvania,[46] Wisconsin[47] (5)
C. Divorce	Iowa,[43] Kentucky,[44] New Jersey,[45] Pennsylvania,[46] Wisconsin[47] (5)

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[43]In these types of cases, Iowa permits coverage if consents of the parties are obtained. In all other cases, Iowa requires no consents of the parties.

[44]*See* note 1, *supra*. Specifically, the Jefferson Circuit Court (30th Judicial Circuit) reserved the right to restrict access "in sensitive trial situations involving children and in any matters of domestic relations."

[45]New Jersey absolutely precludes coverage of these proceedings and uses the broad term "matrimonial disputes."

[46]Pennsylvania specifically excludes these cases from the scope of non-jury civil proceedings which may be covered.

[47]Wisconsin requires that objections of participants to coverage in these cases shall be presumed to have validity. Wisconsin's rule extends to the victims of crimes, including sexual crimes.

Type of Case	States (Total)
D. Juvenile Proceedings	Iowa,[48] Kentucky,[49] New Jersey,[50] New Mexico,[51] Wisconsin[52] (5)
E. Motions to Suppress Evidence	Wisconsin[52] (1)
F. Police Informants	New Mexico,[51] Wisconsin[52] (2)
G. Relocated Witnesses	New Mexico,[51] Wisconsin[52] (2)
H. Sex Crimes	New Jersey (rape only),[50] New Mexico,[51] Wisconsin[52] (3)
I. Trade Secrets	Iowa,[48] New Jersey,[50] Wisconsin[52] (3)
J. Undercover Agents	New Mexico,[51] Wisconsin[52] (2)

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[48]In these types of cases, Iowa permits coverage if consents of the parties are obtained. In all other cases, Iowa requires no consents of the parties.

[49]*See* note 1, *supra*. Specifically, the Jefferson Circuit Court (30th Judicial Circuit) reserved the right to restrict access "in sensitive trial situations involving children and in any matters of domestic relations."

[50]New Jersey absolutely precludes coverage of these proceedings.

[51]New Mexico forbids photographic coverage of these individuals. In the context of sexual crimes, this includes victims and their families.

[52]Wisconsin requires that objections of participants to coverage in these cases shall be presumed to have validity. Wisconsin's rule extends to the victimes of crimes, including sexual crimes.